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Vol. III

TRANSCRIPT OF RECORD

(Pages 1577 to 2280)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 444

FLORENCE B. BIGELOW, MARION B. KOERBER, JOHN E. BLOOM AND WILLIAM C. BLOOM, PETITIONERS,

vs.

RKO RADIO PICTURES, INC., LOEW'S, INCORPORATED, TWENTIETH CENTURY-FOX FILM CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 21, 1945.

CERTIORARI GRANTED NOVEMBER 5, 1945.

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TRANSCRIPT OF RECORD

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 444

FLORENCE BIGELOW, ET AL., *Petitioners,*

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THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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In the

United States Circuit Court of Appeals

For the Seventh Circuit

No. 8716

FLORENCE B. BIGELOW, MARION B. KOERBER, JOHN E. BLOOM AND WILLIAM C. BLOOM,

Plaintiffs-Appellees,

vs.

RKO RADIO PICTURES, INC., A CORPORATION, LOEW'S, INCORPORATED, A CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, A CORPORATION, PARAMOUNT PICTURES, INC., A CORPORATION, BALABAN & KATZ CORPORATION, A CORPORATION, VITAGRAPH, INC., A CORPORATION, WARNER BROS. PICTURES, INC., A CORPORATION, WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, A CORPORATION, AND WARNER BROS. THEATRES, INC., A CORPORATION,

Defendants-Appellants.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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In the

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For the Seventh Circuit

No. 8716

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Plaintiffs-Appellees,

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RKO RADIO PICTURES, INC., A CORPORATION, LOEW'S, INCORPORATED, A CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, A CORPORATION, PARAMOUNT PICTURES, INC., A CORPORATION, BALABAN & KATZ CORPORATION, A CORPORATION, VITAGRAPH, INC., A CORPORATION, WARNER BROS. PICTURES, INC., A CORPORATION, WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, A CORPORATION, AND WARNER BROS. THEATRES, INC., A CORPORATION,

Defendants-Appellants.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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2996 (Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

The following is Film License Agreement between Calumet Film Corporation and Jackson Park Theatre dated March 20, 1942, from Pl. Ex. 37:

2996½ Calumet Film Corporation
1250 So. Wabash Avenue Phone: Calumet 2900
Chicago, Ill.

2997 Sales Control Copy

Standard
(Cut)
of the Screen

Home Office
Hollywood, Calif.

Standard Pictures Distributing Co.

Contract No. .....

Exchange Chicago	Contract No.	Salesman	Date 3/28/42
Theatre	Exhibitor	Location of Theatre	
Jackson Park	N. C. Bloom	Chicago	

Agreement, made in one or more counterparts between ....., a corporation (hereinafter referred to as the "Distributor"), party of the first part, and the Exhibitor (hereinafter named and referred to as the "Exhibitor", operating the theatre or theatres hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as follows:

Schedule Incorporated in This Agreement

First: The schedule contained and referred to herein and all parts thereof, whether written or printed, are hereby deemed included in and made a part of this agreement.

License

Second: The Distributor hereby grants to the Exhibitor, and the Exhibitor hereby accepts a license under the respective copyrights of the several photoplays designated and described in the Schedule herein subject to the terms,

limitations and conditions in this agreement contained to exhibit and reproduce and the Exhibitor agrees to exhibit and reproduce in synchronism and co-ordination with the recorded sound thereof (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first photoplay deliverable hereunder, unless otherwise in the Schedule provided) each of such photographs at the said theatre only for the number of successive days in the said Schedule provided. It being understood that if the Exhibitor does not exhibit all of such photoplays within the period herein specified, the Exhibitor shall at the end of such period immediately pay to the Distributor the aggregate of rentals specified for all photoplays remaining unplayed. If more than one theatre is hereinafter designated no photoplay is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

Recorded Sound: Warranties

Third: (a) "Recorded sound", as used in this agreement, is deemed to mean the spoken words, music or other sounds recorded upon a positive print of a photoplay or upon a record, disc or other similar devices separate and apart from a positive print, for use in synchronism therewith. Distributor does not warrant that such recorded sound will be recorded on the positive print or on records, discs or other similar devices, and reserves the right to use any one or more methods of recording it may from time to time determine.

(b) The Exhibitor warrants and agrees first, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs or other similar devices; and second, that if copyrighted musical compositions are included in such recorded sound, the Exhibitor shall, at the time of the exhibition of such photoplays and the reproduction of such recorded sound, have an effective license from the American Society of Authors, Composers and Publishers publicly to perform the copyrighted musical compositions in the repertoire of said Society.

(c) The Exhibitor agrees to run all of said photoplays on the same size reels as furnished by Distributor; to return to Distributor's Exchange all damaged or broken parts of all sound records, discs or other similar devices, if any have been delivered to Exhibitor hereunder, immediately following the last exhibition of the photoplay with which such sound records are used; and if such recorded sound is recorded on records, discs or other devices, to replace with black, blank, positive stock all parts removed from the positive print or any photoplay while in the Exhibitor's possession, but Exhibitor shall have no right to remove any part of the positive print except as specifically authorized elsewhere in this license.

Time and Place of Exhibition

Fourth: The Exhibitor agrees to exhibit and reproduce under said license said photoplays, but only at the theatre hereinafter specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not to allow any positive print and records, discs, or other similar device if any thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition or reproduction of any such positive print and/or records, discs or other similar device if any at any other time or place. Such license shall be specifically for such exhibitions and reproduction of such photoplays, and for no other purpose. It is agreed that the Exhibitor shall not exhibit the said photoplays on the first exhibition date thereof before six A.M. of that said day.

Payment

Fifth: The Exhibitor agrees to pay for such license as to each of such photoplays the fixed sums herein specified at least seven (7) days in advance of the date of shipment from the Distributor's Exchange or from the last previous exhibitor of the positive print thereof.

Schedule

No.	Pictures (Titles subject to change without notice)	No. Days	Rental Terms	Additional Terms:
	Scarface	2	100.00	Distributor to receive 50% of gross receipts over $650.00. Run: Protection: Woodlawn Kimbark Hamilton Playing Arrangement: April 1/2
			Pictures @	
			Pictures @	
			Pictures @	

Reapplication: The Distributor shall have the right to apply the rental terms (including the license fee and other rental terms specified in the Schedule) of any photoplay to any other photoplay listed or embraced in the Schedule, provided that the Distributor shall at no time increase the total number of photoplays to which the same rental terms apply beyond the total of such photoplays specified in the Schedule. In case the Distributor desires to change the rental terms of any photoplay as above provided, the Distributor shall notify the Exhibitor of the photoplay affected and the terms to be applied to such photoplay, in the notice of availability sent to the Exhibitor relating to such photoplay or prior thereto.

This application when executed by the exhibitor, shall become binding on the distributor only when accepted, countersigned and approved by an officer at Los Angeles, Cal.

End of Schedule

In Witness Whereof, W. C. Bloom the Exhibitor operating the Jackson Pk. Theatre, located at No. ..... Street ..... City ..... State ..... has on ..... executed this application, which upon written acceptance by the Distributor when countersigned and approved in the space to the left provided below shall be deemed to be the license to the Exhibitor for the exhibition of the photoplays specified in the Schedule to said theatre in accordance with the terms hereof.

W. C. Bloom, L. S.
Exhibitor,
By O. B. Salkin,
Partner General Manager Officer
Individual (Strike out three)

Calumet Film Corporation

.....
Salesman.

.....
Manager.

Approved:

Calumet Film Corporation
By H. Elman,
Sales Director.
3/20/42

Direction to Salesmen:—While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular Exhibitor whose offer you believe to be the best obtainable and take a written application from such Exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other Exhibitor directly competing with such Exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

2998 EXHIBITION CONTRACT.

Payment on Account: Deposit.

Sixth: The Exhibitor shall pay to Distributor upon the execution of this application the sum of $ receipt whereof is hereby acknowledged is security for the due and faithful performance by the Exhibitor of all of the terms, provisions and conditions of the license granted hereunder and provided the Exhibitor duly and faithfully performs all of the terms, provisions and conditions of this license, then said sum shall be applied by the Distributor toward the license fees of the last photoplay deliverable hereunder. If the Exhibitor defaults in the due and faithful performance of any of the terms, provisions and conditions of this license the Distributor may apply said sum toward the liquidation of any liability of the Exhibitor under this license of any other agreement which the Distributor has with the Exhibitor, or toward any damage suffered or sustained by the Distributor on account of any breach by the Exhibitor of this license. Anything elsewhere herein contained to the contrary notwithstanding the Distributor shall be under no obligation to maintain the said sum in any separate fund but shall have the right to co-mingle same with its other funds.

Protection and Run.

Seventh: During the life of this contract the Distributor agrees not to exhibit or license the exhibition of any such photoplays in conflict with the "run" or "protection period, if any, in the Schedule specified. Unless otherwise provided herein, such "protection period" shall be computed from the last date of exhibition of each photoplay as fixed herein. If "protection" is granted hereunder against a specified theatre or theatres which "protection" shall indicate that it was the intention of the Distributor to grant such "protection" against all of the theatres in the immediate neighborhood or vicinity of the Exhibitor's theatre, then, unless otherwise provided in the Schedule, such "protection" shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

If the Exhibitor is granted hereunder a second or subsequent "run," the Distributor shall have the right in its sole discretion to grant to the Exhibitor in respect to any of the photoplays herein embraced a "run" prior to such second or subsequent "run" by giving notice in writing to such effect to the Exhibitor and the Exhibitor agrees to exhibit any such photoplay in accordance therewith.

Delivery and Return of Prints, Records, and Discs.

Eighth: The Distributor agrees to deliver to the Exhibitor during the period specified in Article Second hereof or otherwise in the Schedule provided for a positive print with recorded sound for exhibition and reproduction of each of such photoplays for exhibition and reproduction at the said theatre on the dates specified or on the dates determined as herein provided. Delivery of such positive prints by the Distributor to the Exhibitor at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to the Exhibitor or at the place where the Exhibitor's theatre is located prints at least one hour before the usual time for the opening of the Exhibitor's theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels, containers, records, discs, or other similar devices furnished therewith to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor immediately after the last exhibition of such positive print, in the same conditions as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all cost of transportation of such positive prints, reels, containers, records, discs or other similar devices from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints, records, discs and or other similar devices elsewhere than to the Distributor's exchange transportation charges collect. It is

agreed that the delivery of a positive print and/or any records, discs or other similar devices properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print and/or any records, discs, or other similar devices by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print and/or records, discs, or other similar devices to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print and/or records, discs, or other similar devices to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Selection or Designation of Play Dates.

Ninth: The exhibition date or dates of each photoplay, unless definitely specified or otherwise provided for in the Schedule, or otherwise agreed upon, shall be determined as follows:

1. The Distributor shall mail to the Exhibitor at least fifteen days' notice in writing of the date upon which each photoplay will be available for exhibition by the Exhibitor, consistent with prior runs and/or protection heretofore or hereafter granted to other exhibitors (which date is hereinafter referred to as "the available date"). Such notice shall be of no effect unless prints of such photoplay are in the exchange of the Distributor from which the Exhibitor is served.

2. Within fourteen days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates within a thirty day period commencing with such available date, by giving written notice to the Distributor of the date, or dates so selected.

If the exhibition date or dates so selected by the Exhibitor are not open for the Exhibitor, then the exhibition date or dates shall be designated as provided in the following paragraphs "A" and "B":

(A) If other dates within said thirty day period are open the Exhibitor shall immediately select from such other open dates another date or other dates; failing to do so,

then the Distributor shall designate the date or dates which shall be within a period not earlier than two weeks nor later than six weeks from the date first selected by the Exhibitor, by mailing fourteen days' notice to the Exhibitor.

(B) If no other date or dates within said thirty day period are open (after the Exhibitor's written request therefor) then the Exhibitor shall designate the date or dates which shall be within a period not earlier than two, nor later than six weeks from the last date of the said thirty day period, by immediately giving written notice thereof to the Distributor. If the Exhibitor fails to immediately designate such date or dates, as provided in this paragraph "B", the Distributor shall designate the date or dates within the same period by mailing to the Exhibitor fourteen days notice of such date or dates.

If the Exhibitor fails to make any selection within fourteen days after the mailing of the available dates of any photoplay, then the Distributor may at any time designate the exhibition date or dates thereof, which date or dates shall not be prior to the available date, by mailing notice thereof at least fourteen days before such exhibition date or dates; and if any such photoplay shall have been exhibited by any other exhibitor having a "run" prior in point of time and immediately preceding the "run" specified in the Schedule granted to the Exhibitor, then the Distributor shall designate the exhibition date or dates thereof, which shall be within a period of forty-five days commencing with the available date. In case the exhibition date or dates of any of the photoplays shall be designated by the Distributor pursuant to this paragraph, "the period of protection," if any, specified in the schedule, shall begin upon the fifteenth (15th) day of the thirty-day period specified in paragraph 2 of this Article.

3. The exhibition date or dates of any of the photoplays selected by the Exhibitor (if available), or designated as in this Article ninth provided, or otherwise agreed upon between the Distributor and the Exhibitor, shall be for all purposes the exhibition date or dates of such photoplay as though definitely specified in the Schedule.

4. In case this contract embraces a series of feature photoplays, five reels or more in length and featuring a particular star or director, the Exhibitor shall not be required hereunder to exhibit more than one photoplay of any such series every five weeks.

Loss of and Damage to Prints, Records and Discs.

Tenth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print and for all records, discs or other similar devices lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print, records, discs or other similar devices to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty days (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive prints, records, discs or other similar devices, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegraph of the loss, theft or destruction of, or damage or injury to any positive print, records, discs or other similar devices. If any positive print, records, discs, or other similar devices shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's exchange that such print and or records, discs or other similar device were received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage (or number of records or discs) so damaged or destroyed.

Description and Titles of Photoplays.

Eleventh: The Exhibitor shall not be required to accept for any photoplay described in the Schedule as the photoplay of a star, or a director, or based upon a specified story, book or play or by an identifying description, any other photoplay of a different star or different director, or based upon a different story, book or play, or not corresponding to such identifying description, as the case may be. Nothing herein contained shall limit the right of the Distributor to change the title of any such photoplays, or, as respects any photoplay based upon any story, book or play, prevent the making of any alterations, changes in or adaptations thereof.

Assignment Upon Sale of Theatres.

Twelfth: This contract shall not be assigned by Exhibitor without the written acceptance of the assignee and the written consent of the Distributor; provided, that if the Exhibitor sells or disposes of his interest in the theatre hereinafter specified, he may assign this contract to the purchaser of such interest without written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee; such assignment, however, shall not relieve the Exhibitor of liability hereunder, unless the Distributor consents in writing specifically to release the Exhibitor from such liability.

Exhibition and Advertising.

Thirteenth: The Exhibitor agrees to run photoplays (excepting "news reels") as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as a Standard Picture. In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter leased by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition and reproduction of said photoplays must be leased from or through the Distributor

NORTOWN 6320 N. Western	A.P. 4/4/31		4/4/31 Cn	SF-10/1/32 Cn	10/1/32 B	6/17/34 C	C	4/10/36 B & C DF-11/27/36	11/27/36 B	B	1/22/39-C 3/29/39-B	B	B	B	B
ORIENTAL 20 W. Randolph	A.L. 5/9/26	LOOP	LOOP	LOOP	LOOP	3/2/34 B	B	B	2/5/37 LOOP	Closed 5/26/38					
PANTHEON 4642 Sheridan	A.L. 9/28/30	Cn	DF-1/25/31 C & B	Cn	C	C	C	DF-12/25/36 C	1/22/37 B	B	2/3/39-C 2/24/39-B	B	B	B	B
PARADISE 231 N. Crawford	A.P. 9/17/28	A	A	DF-4/22/32 Closed (A) 6/10/32		Opened 9/29/34 B	B	DF-11/25/36 B	B	B	B	B	B	B	B
PARK LaGrange, Ill.	A.L. 2/27/37								2/27/37 2nd.	2nd.	2nd.	2nd.	2nd.	2nd 1/1/42	2nd
PORTAGE 4050 Milwaukee	A.L. 1/1/42													1st	1st
REGAL 4719 S. Parkway	A.L. 2/6/28	B	DF-5/2/31 B	SF-10/5/32 B	C	C	C	DF-12/25/36 C	10/8/37 B	B	B	B	B	B	B
RIVIERA 4746 N. Racine	A.L. 9/29/28	A	DF-5/1/31 A	SF-9/30/32 A	5/27/33 B	B	B	DF-11/29/36 6/12/36 A	A	A	A	A	A	A	A
ROOSEVELT 110 N. State	A.P. 7/1/22	LOOP	LOOP	5/11/32-B 10/1/32 LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	DF-9/17/41 LOOP	SF-9/16/42 LOOP	LOOP
SENATE 3128 W. Madison	A.L. 2/26/28 Subsequent purchase	DF-12/21/30 B	12/13/31 Cw	SF-10/2/32 3/12/32-B 10/4/32-C	C	C	C	DF-12/25/36 C			C	C	C	C	C
SOUTHTOWN 610 W. 63rd	A.P. 12/25/31		DF-12/25/31 A	SF-9/30/32 A	A	A	A	DF-10/16/36 A	A	A	A	A	A	A	A
STATE 5814 W. Madison	A.L. 11/24/29	Cw	DF-1/9/31 Cw	SF-10/2/32 Cw	C	C	C	DF-12/25/36 C	C	C	C	C	C	C	C
STATE LAKE 180 N. State	A.P. 11/1/36									12/24/38 B	B	B	10/24/41 LOOP	LOOP	LOOP
TERMINAL 3315 Lawrence	A.L. 1/25/33 Subsequent purchase				1/25/38 C	C	C	DF-12/25/36 C	C	C	C	C	C	C	C
TIVOLI 6329 Cottage Grv.	A.P. 2/16/21	A	A	DF-4/22/32 SF-4/29/32 A	A	A	A	DF-10/16/36 A	A	A	A	A	A	A	A
TIVOLI Downers Grove, Illinois	A.L. 8/1/37								8/1/37 C	C	C	C	C	C	C
TOWER 1510 E. 63rd	A.L. 9/22/28	A	DF-4/3/31 A	SF-9/30/32 A	8/13/33 C	C	C	DF-11/24/36 4/17/36-B, C 10/30/36-B	B	B	B	B	B	B	B
UNITED ARTISTS 45 W. Randolph	A.L. 4/6/29	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	Closed 6/2/39 Opened 7/21/39	LOOP	LOOP	LOOP	LOOP
UPTOWN 4816 Broadway	A.L. 8/17/25	A	A	DF-4/22/32 SF-4/29/32 A	A	A	A	DF-10/16/36 A	A	A	A	A	A	A	A
VALENCIA 1560 Sherman Evanston, Ill.	A.L. 2/18/37								2/18/37-2nd. 3/2/37 1st.	1st.	1st.	1st.	1st.	1st.	1st.
VARSITY 1710 Sherman Evanston, Ill.	A.L. 11/24/29	B-C	DF-5/6/31 B-C	SF-10/3/32 11/28/32 B	B	B	B	B	7/16/37 A DF-6/28/37	A	A	A	A	A	A
WILL ROGERS 5635 Belmont	A.P. 9/5/36							9/5/36 C DF-12/25/36	12/5/37 1st.	1st.	1st.	1st.	1st.	1st.	1st.
WINDSOR 1225 N. Clark	A.L. 11/24/29	8/30/30 Lease Expired													

A.L. denotes acquired by lease.
A.P. denotes acquired by purchase—land acquired and building erected by Balaban & Katz or one of its affiliates except the Iris, Roosevelt and State-Lake Theatres which were purchased.
DF denotes double feature policy.
SF denotes single feature policy.
A.L. and A.P. dates show actual operation and not dates on leases or deeds.
APOLLO and GARRICK do not have a set policy as to single or double features.
w denotes west side release.
n denotes north side release.

and must not be sold, leased or given away by the Exhibitor.

Unless this contract expressly provides for the "First Run" in the City or Town wherein the theatre hereinafter specified is located, the Exhibitor agrees not to advertise any of the photoplays herein provided for by means of lithograph, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to and until after the completion of the exhibition of such photoplay by any other exhibitor having the right of the "first run" thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other exhibition contract with any other exhibitor.

Taxes.

Fourteenth: The exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and or the exhibition and or reproduction of positive prints and or any records, discs or other similar devices of the photoplays and or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay such part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Minimum Admission Charge.

Fifteenth: The Exhibitor warrants and agrees that during the period each of the photoplays herein provided for shall be exhibited in said theatre the Exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than ten cents, unless a greater minimum admission charge is herein elsewhere specified, for each exhibition and that such photoplays shall not be exhibited unless such admission fee is charged.

Adoption Standard License Agreement—Arbitration.

Sixteenth: If, prior to the expiration of the term of this agreement, a standard license agreement shall be adopted generally by the Distributors and Exhibitors, then and in that event and on and after the date of the adoption of such standard license agreement, the terms and provisions therein contained relating solely to arbitration shall be deemed incorporated herein with the same force and effect as if herein fully set forth.

Adoption Zoning Plan.

Seventeenth: If, prior to the expiration of the term of this agreement, a zoning or protection plan for the territory in which the Exhibitor's theatre is located shall be generally adopted by Distributors and Exhibitors in said territory, then and in such event and from the date of the adoption of such plan the protection period, if any, therein specified for the Exhibitor's theatre shall be substituted for the protection period, if any, hereinabove granted the Exhibitor with the same effect as if herein fully set forth.

Remedy for Breach.

Eighteenth: Anything to the contrary notwithstanding in this or any other agreement, between the parties hereto it is agreed that if the Exhibitor fails or refuses to perform fully this contract or any other contract between the parties hereto, the Distributor may at its option, forthwith suspend deliveries of motion pictures provided for in this and any other contract between the parties hereto and or terminate this and any other such contracts, in which event the aggregate of all license fees for all motion pictures specified in this and any other contract whether exhibited and not paid for or not yet exhibited, shall forthwith become due and payable by the Exhibitor. The termination of this agreement by Distributor shall be without prejudice to any other right or remedy which it may have by reason of any breach of the Exhibitor of this or any other existing agreement between the parties.

Delay in or Prevention of Performance.

Nineteenth: In case the Exhibitor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of censor rulings, the elements, accidents, strikes, fire, insurrection; acts of God, the public enemy, public calamity or order of any Court of competent jurisdiction, then such delay or failure of performance with respect to such photoplay shall be excused and all claims or causes of action for damages therefor, or arising therefrom, are hereby expressly waived by the Distributor. In any such event, the time of the Exhibitor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, unless performance thereof because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Exhibitor with respect to any such photoplay shall be waived. The resumption of performance by the Exhibitor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance provided, that if such delays and or prevention of performance, caused as aforesaid, shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay the exhibition hereunder of which has been so delayed or prevented, by sending after the expiration of such three (3) months period to the other party notice in writing to such effect.

In case the Distributor shall be delayed in or prevented from the performance of his contract with respect to any of the photoplays herein specified by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, Court orders, censor rulings, delays of any common carrier, or of the United States Postal authorities, delays in production or failure of the producers of any of such photoplays to make or deliver them to the Distributor or of any star or other performer to appear therein in time for delivery as herein provided, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor. In any such event, the time of the Distributor to perform this contract with respect to

any such photoplay shall be extended for a period equal to the time of such delay. The resumption of performance by the Distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disbility or prevention of performance and the Distributor shall deliver to the Exhibitor any such photoplay at the earliest available date thereafter, and such delivery in any such case shall be with the same force and effect as though delivery took place within the period herein above limited and the Exhibitor agrees, to accept, pay for and exhibit and reproduce in the manner herein provided any such photoplay at such later period pursuant to the terms hereof.

Acceptance of Application.

Twentieth: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print or records, discs or other similar devices of any of the photoplays or their furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within the number of days after the date thereof hereinafter specified (immediately following the name of the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, or if such city is not hereinafter named then within the number of days specified immediately following the city hereinafter named nearest thereto) said application shall be deemed withdrawn and the Distributor shall forthwith return any sums paid on account thereof by the Exhibitor. Albany 10; Atlanta 20; Boston 10; Buffalo 10; Charleston 15; Charlotte 15; Chicago 15; Cincinnati 20; Cleveland 15; Dallas 30; Denver 20; Des Moines 15; Detroit 15; Indianapolis 15; Jacksonville 15; Kansas City 15; Los Angeles 25; Little Rock 15; Louisville 15; Memphis 20; Milwaukee 15; Northern New Jersey 7; Minneapolis 20; Butte 30; New Haven

10; New Orleans 15; New York City 7; Oklahoma City 20; Omaha 20; Peoria 15; Philadelphia 10; Pittsburgh 14; Portland, Ore. 30; St. Louis 15; Salt Lake City 30; San Francisco 25; Seattle 30; Washington, D. C. 14.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor, shall be forwarded to the Exhibitor.

Waiver.

Twenty-First: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any or subsequent breach or default by such other party.

Verbal Promises: Representations.

Twenty-Second: This Contract is complete and no promises of representations have been made by either party to the other except as set forth herein.

Counsel Fees.

Twenty-Third: In case the Distributor shall institute and prosecute any action against the Exhibitor for any sums becoming due to the Distributor hereunder either by way of rentals, liquidated damages or otherwise, then and in any such case, in addition to the sums sued for and the interest and costs allowable in such action, the Distributor shall be entitled to recover from the Exhibitor its reasonable counsel fees in connection with the institution and prosecution of such action and the collection of any judgment secured herein which amount is hereby fixed at ten percent (10%) of the amount of the recovery had therein.

2999 PLAINTIFF'S EXHIBIT 44

INCOME AND EXPENSE

Company—B. & K. Corp., Maryland Closing Period as of _____ 19____ _____ Weeks

	No.	Income Detail	Total	1936 Theatre Location Weeks Ending		1937 Theatre Location Weeks Ending		1938 Theatre Location Weeks Ending		1939 Theatre Location Weeks Ending	No.	1940 Theatre Location Weeks Ending		1941 Theatre Location Weeks Ending		1942 Theatre Location Weeks Ending		Theatre Location Weeks Ending		Theatre Location Weeks Ending		No.
CASH INCOME	51	Admissions		173,448.40		147,149.35		124,339.09		130,194.54	51	127,986.01		120,605.81		130,691.21						51
	52	Advertising									52											52
	54	Sub-rents (Tenants)									54											54
	55	Miscellaneous		35.40		32.75		59.29		47.19	55	91.95		13.59		17.23						55
	57	Interest									57											58
	58	Interest Inter-Company									58											59
	58a	Sub-rents (Inter-Company)						2,375.62			59											
	59	Candy-Vending Profit		2,351.82		2,243.53				4,796.96		5,599.79		6,346.19		7,779.04						
		Corporate														100.00						
		Theatre Rental																				
		Total Cash Income																				
NON CASH INCOME																						
		Total Non-Cash Income																				
		Total Income		175,835.62		149,425.63		126,774.00		135,038.69		133,677.75		126,965.59		138,587.48						
		EXPENSE DETAIL																				
	1	Par. Feature Film Rental	40,414.11	6,324.69		8,250.00		6,397.04		5,468.05	1	6,745.00		5,937.50		5,589.87						1
	2	Other Feature Film Rental		25,661.40		30,519.71		30,184.20		29,978.83	2	30,119.37		28,559.18		27,718.71						2
	1A	Par Short Film Rental		1,727.90		1,528.37		1,408.69		1,325.29	1A	1,302.73		1,177.94		1,363.43						1A
	2A	Other Short Film Rental		6,700.12		3,216.92		3,489.00		3,648.80	2A	4,281.25		4,030.37		3,723.35						2A
	3	Transportation of Film		530.00		583.03		520.00		514.00	3	545.00		604.50		527.30						3
	4	Production		226.52		224.39		224.38		224.38	4	238.69		305.27		224.38						4
	5	Stage Salaries									5											5
	5A	Prizes, etc.		7,386.70		32.12		916.01		441.39	5A	78.61		138.30		166.06						5A
	6	Talent Sal., Trans. & Bkg. Fees									6											6
	7	Orchestra Salaries									7											7
	8	Publicity Newspaper		4,350.84		4,118.39		3,336.19		3,199.63	8	3,187.76		3,607.11		3,936.02						8
CASH EXPENSE	10	Publicity Miscellaneous		3,802.91		2,796.59		2,736.28		2,294.99	10	2,360.22		2,614.68		2,429.63						10
	11	Publicity Salaries								61.97	11											11
	12	House Salaries		19,708.27		20,047.15		19,008.31		18,482.14	12	19,392.31		19,504.36		20,019.66						12
	13	Legal and Auditing		1,518.11		2,737.41		1,092.06		1,870.07	13	776.57		368.18		335.10						13
	14	Traveling (Exc. Overhead)				12,520.92		10,213.12		10,111.89	14	10,516.61		10,176.89		11,148.28						14
	15	Telephone and Telegraph		239.02		227.74		137.69		122.92	15	122.22		129.66		157.79						15
	15A	Postage									15A	5.21				1.00						15A
	16	Electricity (Light and Power)		7,543.33		6,927.82		6,342.16		6,056.79	16	5,934.40		6,076.37		5,887.64						16
	17	Fuel, Water and Cooling		2,550.20		2,854.24		1,994.40		1,777.47	17	2,137.20		2,018.21		1,753.05						17
	18	Repairs		2,980.83		2,311.14		1,586.09		1,663.55	18	2,136.02		2,131.45		3,907.72						18
	19	Electric Light Bulbs		1,018.85		1,135.14		882.02		1,029.56	19	878.90		746.95		947.47						19
	20	Supplies Other		1,767.18		1,421.11		1,102.23		1,305.02	20	1,135.01		1,536.38		1,597.27						20
	21	Uniforms		361.19		459.78		261.39		316.25	21	409.25		475.91		397.87						21
	23	Miscellaneous		1,009.35		1,053.42		1,069.34		996.92	23	1,000.66		940.76		837.25						23
	25	Management		2,221.29		1,914.71		1,747.21		6,148.37	25	5,603.74		5,237.31		5,504.19						25
	26	Rent		76,027.00		74,794.52		74,794.52		74,794.52	26	76,027.40		74,794.52		74,794.52						26
	27	Insurance		757.53		765.74		450.51		827.76	27	878.59		857.47		794.88						27

		Total Non-Cash Income													
		Total Income		175,835.62		149,425.63		126,774.00		135,038.69		133,677.75		126,965.59		138,587.48	
		EXPENSE DETAIL															
CASH EXPENSE	1	Par. Feature Film Rental	40,414.11	6,324.69	43,515.00	8,250.00	41,478.93	6,397.04	40,420.97	5,468.05	1	42,448.35 6,745.00	40,104.99	5,937.50	38,395.36	5,589.87	1
	2	Other Feature Film Rental		25,661.40		30,519.71		30,184.20		29,978.83	2	30,119.37		28,959.18		27,718.71	2
	1A	Par Short Film Rental		1,727.90		1,528.37		1,408.69		1,325.29	1A	1,302.73		1,177.94		1,363.43	1A
	2A	Other Short Film Rental		6,700.12		3,216.92		3,489.00		3,648.80	2A	4,281.25		4,030.37		3,723.35	2A
	3	Transportation of Film		530.00		583.03		520.00		514.00	3	545.00		604.50		527.30	3
	4	Production		226.52		224.39		224.38		224.38	4	238.69		305.27		224.38	4
	5	Stage Salaries									5						5
	5A	Prizes, etc.		7,386.70		32.12		916.01		441.39	5A	78.61		138.30		166.06	5A
	6	Talent Sal., Trans. & Bkg. Fees									6						6
	7	Orchestra Salaries									7						7
	8	Publicity Newspaper		4,350.84		4,118.39		3,336.19		3,199.63	8	3,187.76		3,607.11		3,936.02	8
	10	Publicity Miscellaneous		3,802.91		2,796.59		2,736.28		2,294.99	10	2,360.22		2,614.68		2,429.63	10
	11	Publicity Salaries								61.97	11						11
	12	House Salaries		19,708.27		20,047.15		19,008.31		18,482.14	12	19,392.31		19,504.36		20,019.66	12
	13	Legal and Auditing		1,518.11		2,797.41		1,992.06		1,870.07	13	776.57		368.18		335.10	13
	14	Traveling (Exc. Overhead)				12,520.92		10,213.12		10,111.89	14	10,516.61		10,176.89		11,148.28	14
	15	Telephone and Telegraph		239.02		227.74		137.69		122.92	15	122.22		129.66		157.79	15
	15A	Postage									15A	5.21				1.00	15A
	16	Electricity (Light and Power)		7,543.33		6,927.82		6,342.16		6,056.79	16	5,934.40		6,076.37		5,887.64	16
	17	Fuel, Water and Cooling		2,550.20		2,854.24		1,994.40		1,777.47	17	2,137.20		2,018.21		1,753.05	17
	18	Repairs		2,980.83		2,311.14		1,586.09		1,663.55	18	2,136.02		2,131.45		3,907.72	18
	19	Electric Light Bulbs		1,018.85		1,135.14		882.02		1,029.56	19	878.90		746.95		947.47	19
	20	Supplies Other		1,767.18		1,421.11		1,102.23		1,305.02	20	1,135.01		1,536.38		1,597.27	20
	21	Uniforms		361.19		459.78		261.39		316.25	21	409.25		475.91		397.87	21
	23	Miscellaneous		1,009.35		1,053.42		1,069.34		996.92	23	1,000.66		940.76		837.25	23
	25	Management		2,221.29		1,914.71		1,747.21		6,148.37	25	5,603.74		5,237.31		5,504.19	25
	26	Rent		76,027.00		74,794.52		74,794.52		74,794.52	26	76,027.40		74,794.52		74,794.52	26
	27	Insurance		757.53		765.74		450.51		827.76	27	878.59		857.47		794.88	27
	28	Taxes (Excluding Fed. Income)		765.82		786.31		1,065.67		1,069.67	28	1,083.65		1,137.17		1,126.67	28
	28A	Special Taxes									28A						28A
	30	Interest									30						30
	31	Interest Inter-Company									31						31
		Corporate				238.32		241.93		497.36		430.91		480.06		529.98	
	24	Contributions		20.00		20.00											
	12A	Non-Union House Salaries		12,585.60													
		Fed. Soc. Sec. Tax		311.77		885.75		1,087.65		1,078.68		896.93		959.91		953.91	
	40	Prior Years Adj.	Red	67.78		664.05											
		Total Cash Expense		188,028.64		181,756.69											
NON CASH EXPENSE	29	Depreciation		15,317.65		14,253.39		14,040.41		13,004.75	29	13,138.48		12,781.13		12,764.44	29
	29B	Sound Equip. Depreciation									29B						29B
	29C	Depreciation		20.58		39.64		407.52		519.87		676.69		512.14		533.71	
		Total Non-Cash Expense		15,338.23		14,293.03											
		Total Expense		203,366.87		196,049.72		186,736.02		188,830.89		192,039.38		188,239.68		189,671.15	
		Net Earnings	Red	27,531.25		46,624.09		59,962.02		52,792.20		58,361.63		61,274.09		51,083.67	
		Non-Cash Earnings															
		Cash Earnings															

3000

PLAINTIFF'S EXHIBIT 45

CERTAIN DATA REGARDING BALABAN & KATZ THEATRES

		1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943
ADMIRAL															
3940 W. Lawrence	A.L. 1/1/42														
ALAMO		1st.		SF-10/2/32	1/15/33									1/1/42	
3639 W. Chicago	A.L. 9/1/30	10/12/30 Cw	DF-1/2/31	Cw	Lease expired									2nd.	2nd.
ALBA						12/25/34		DF-12/25/36	12/5/37					4/5/42	
4816 N. Kedzie	A. L. 12/25/34					1st	1st	1st.	2nd	2nd	2nd	2nd	2nd	2nd. & 3rd.	2nd. & 3rd.
APOLLO						8/22/34									
74 W. Randolph	A.L. 8/22/34					LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP
BELMONT		DF-11/9/30		SF-10/2/32		6/24/34	5/26/35	11/29/36							
1635 Belmont	A.L. 5/9/30	5/9/30 Cn	Cn	Cn	Cn	C & 1st	C	B	B	B	B	B	B	B	B
BELPARK	A.L. 11/24/29	DF-12/21/30		SF-10/2/32				DF-12/1/36 DF-12/25/36	12/5/37				12/28/41		
3231 N. Cicero	Subsequent purchase	Cw	Cw	Cw	C	C	C	C	1st.	1st	1st.	1st	C	C	C
BERWYN			DF-1/9/31	SF-10/2/32				DF-12/25/36							
6404 W. 22nd.	A.L. 11/24/29	Cw	Cw	Cw	C	C	C	C	C	C	C	C	C	C	C
Berwyn, Ill.															
BILTMORE	A.L. 8/1/30		DF-1/7/31	SF-10/2/32				DF-12/25/36	10/31/37						
2046 W. Division		Cw	Cw	Cw	1st.	1st.	1st.	1st.	C	C	C	C	C	C	C
CENTRAL PARK			DF-1/9/31	SF-9/28/32				DF-12/25/36							
3535 W. Roosevelt	A.P. 10/27/17	Cw	Cw	Cw	C	C	C	C	C	C	C	C	C	C	C
CENTURY		DF-12/17/30		SF-10/1/32	9/8/33	9/22/34		DF-11/24/36							
2820 N. Clark	A.L. 2/7/30	B	B	B	C	C & B	C & B	6/19/36 B	B	B	B	B	B	B	B
CHICAGO															
175 N. State	A.P. 10/26/21	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP
CINE									9/4/37						
2516 Devon	A.P. 9/4/37								1st	1st	1st.	1st	1st	1st	1st
CONGRESS		DF-12/17/30		SE-10/1/32	8/6/33			DF-11/26/36							
2135 Milwaukee	A.L. 11/23/29	B	B	B	C	C	C	12/5/36 B	B	B	B	B	B	B	B
CORONET—(Main)	A.L. 4/25/36														
817 Chicago	Closed 8/30/36							4/25/36	2/19/37						
Evanston, Ill.	Reopened 2/19/37							3rd.	2nd.	2nd.	2nd.	2nd	2nd	2nd	2nd
COVENT			DF-2/3/31	SF-10/1/32				DF-12/25/36							
2631 N. Clark	A.L. 11/24/29	1st.	1st.	1st.	1st.	1st.	1st.	1st.	C & 1st.	C & 1st.	C & 1st.	C & 1st.	C & 1st.	C & 1st.	C & 1st.
CRYSTAL			DF-1/9/31	SF-10/2/32				DF-12/25/36							
2705 W. North	A.L. 11/24/29	Cw	Cw	Cw	1st.	1st.	1st.	12/27/36 C	C	C	C	C	C	C	C
DEARBORN—(SURF)		9/6/30													
40 W. Division	A.L. 11/24/29	Lease expired													
DRAKE														1/1/42	
3548 W. Montrose	A.L. 1/1/42													1st.	1st
GARRICK						5/30/34									
64 W. Randolph	A.L. 5/30/34					LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP
GATEWAY		6/26/30	DF-1/2/31	SF-10/2/32				DF-12/25/36	1/29/37-B						
5216 Lawrence	A.P. 6/26/30	Cn	Cn	Cn	C	C	C	C	6/6/37-C 11/19/37-B	B	B	B	B	B	B
GRANADA	A.L. 12/6/29		DF-4/3/31	SF-10/7/32				DF-10/16/36							
6427 Sheridan	Subsequent purchase	A	A	A	B	B	B	3/27/36 A	A	A	A	A	A	A	A
HARDING	A.L. 2/6/28		DF-4/13/31	SF-10/7/32		1/5/34		11/27/36							
2724 Milwaukee		A	A	A	A	B	B	A DF-11/27/36	A	A	A	A	A	A	A
HOWARD												6/1/40			
1621 Howard	A.L. 6/1/40											C	C	C	C
IRIS									10/31/37						
5747 W. Chicago	A.P. 10/31/37								1st. & 2nd.	1st. & 2nd.	1st. & 2nd.	1st. & 2nd.	1st. & 2nd.	1st. & 2nd.	1st. & 2nd.
LA GRANGE	A.L. 11/24/29		DF-4/24/31	SF-10/2/32				DF-12/25/36							
La Grange, Ill.	Subsequent purchase	Cw	Cw	Cw	C	C	C	C	C	C	C	C	C	C	C
LAKESIDE		Closed			Opened			DF-12/20/36							
4730 Sheridan	A.L. 9/28/30	11/13/30 1st.			9/20/33 1st.	1st.	1st.	1st.	1st.	1st.	1st.	1st.	1st.	1st.	1st.
									11/11/37						

LUNA 4731 W. Belmont	A.L. 11/11/37								11/11/37 2nd.	2nd.	2nd.	2nd.	2nd.	2nd.	2nd.
MANOR 5609 W. North	A.L. 9/1/30	1st. 10/12/30 Cw	DF-1/7/31 Cw	SF-10/2/32 Cw	C	C	C	DF-12/25/36 C	C	C	C	C	C	C	C
MARBRO 4110 W. Madison	A.L. 12/6/29 Subsequent purchase	A	DF-4/3/31 A	SF-9/30/32 A	A	A	A	DF-10/16/36 A	A	A	A	A	A	A	A
MARYLAND 855 E. 63rd	A.L. 9/2/28	DF-12/25/30 C	C	SF-10/2/32 C	C	C	C	DF-12/25/36 C	C	C	C	C	C	C	C
McVICKERS 25 W. Madison	A.L. 2/2/26	LOOP	LOOP	LOOP	LOOP	Closed 7/19/34									
NORSHORE 1748 Howard	A.L. 6/17/26	B	DF-3/1/31 B	SF-10/1/32 B	11/20/32 Cn	C	C	DF-11/28/36 11/28/36 B	B	B	B	B	B	B	B
NORTOWN 6320 N. Western	A.P. 4/4/31		4/4/31 Cn	SF-10/1/32 Cn	10/1/32 B	6/17/34 C	C	4/10/36 B & C	11/27/36 B	B	1/22/39-C 3/29/39-B	B	B	B	B
ORIENTAL 20 W. Randolph	A.L. 5/9/26	LOOP	LOOP	LOOP	LOOP	3/2/34 B	B	DF-11/27/36 B	2/5/37 LOOP	Closed 5/26/38					
PANTHEON 4642 Sheridan	A.L. 9/28/30	Cn	DF-1/25/31 C & B	Cn	C	C	C	DF-12/25/36 C	1/22/37 B	B	2/3/39-C 2/24/39-B	B	B	B	B
PARADISE 231 N. Crawford	A.P. 9/17/28	A	A	DF-4/22/32 Closed (A) 6/10/32		Opened 9/29/34 B	B	DF-11/25/36 B	B	B	B	B	B	B	B
PARK LaGrange, Ill.	A.L. 2/27/37								2/27/37 2nd.	2nd.	2nd.	2nd.	2nd.	2nd. 1/1/42	2nd.
PORTAGE 4050 Milwaukee	A.L. 1/1/42													1st.	1st.
REGAL 4719 S. Parkway	A.L. 2/6/28	B	DF-5/2/31 B	SF-10/5/32 B	C	C	C	DF-12/25/36 C	10/8/37 B	B	B	B	B	B	B
RIVIERA 4746 N. Racine	A.L. 9/29/28	A	DF-5/1/31 A	SF-9/30/32 A	5/27/33 B	B	B	DF-11/20/36 6/12/36 A	A	A	A	A	A	A	A
ROOSEVELT 110 N. State	A.P. 7/1/22	LOOP	LOOP	5/11/32-B 10/1/32 LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	DF-9/17/41 LOOP	SF-9/16/42 LOOP	LOOP
SENATE 3128 W. Madison	A.L. 2/26/28 Subsequent purchase	DF-12/21/36 B	12/13/31 Cw	SF-10/2/32 3/12/32-B 10/4/32-C	C	C	C	DF-12/25/36 C	C	C	C	C	C	C	C
SOUTHTOWN 610 W. 63rd	A.P. 12/25/31		DF-12/25/31 A	SF-9/30/32 A	A	A	A	DF-10/16/36 A	A	A	A	A	A	A	A
STATE 5814 W. Madison	A.L. 11/24/29	Cw	DF-1/9/31 Cw	SF-10/2/32 Cw	C	C	C	DF-12/25/36 C	C	C	C	C	C	C	C
STATE LAKE 180 N. State	A.P. 11/1/36									12/24/38 B	B	B	10/24/41 LOOP	LOOP	LOOP
TERMINAL 3315 Lawrence	A.L. 1/25/33 Subsequent purchase				1/25/33 C	C	C	DF-12/25/36 C	C	C	C	C	C	C	C
TIVOLI 6329 Cottage Grv.	A.P. 2/16/21	A	A	DF-4/22/32 SF-4/29/32 A	A	A	A	DF-10/16/36 A	A	A	A	A	A	A	A
TIVOLI Downers Grove, Illinois	A.L. 8/1/37								8/1/37 C	C	C	C	C	C	C
TOWER 1510 E. 63rd	A.L. 9/22/28	A	DF-4/3/31 A	SF-9/30/32 A	8/13/33 C	C	C	DF-11/24/36 4/17/36-B, C 10/30/36-B	B	B	B	B	B	B	B
UNITED ARTISTS 45 W. Randolph	A.L. 4/6/29	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	LOOP	Closed 6/2/39 Opened 7/21/39	LOOP	LOOP	LOOP	LOOP
UPTOWN 4816 Broadway	A.L. 8/17/25	A	A	DF-4/22/32 SF-4/29/32 A	A	A	A	DF-10/16/36 A	A	A	A	A	A	A	A
VALENCIA 1560 Sherman Evanston, Ill.	A.L. 2/18/37								2/18/37-2nd. 3/2/37 1st.	1st.	1st.	1st.	1st.	1st.	1st.
VARSITY 1710 Sherman Evanston, Ill.	A.L. 11/24/29	B-C	DF-5/6/31 B-C	SF-10/3/32 11/28/32 B	B	B	B	B	7/16/37 A DF-6/28/37	A	A	A	A	A	A
WILL ROGERS 5635 Belmont	A.P. 9/5/36							9/5/36 C DF-12/25/36	12/5/37 1st.	1st.	1st.	1st.	1st.	1st.	1st.
WINDSOR 1225 N. Clark	A.L. 11/24/29	8/30/30 Lease Expired													

A.L. denotes acquired by lease.

3001 PLAINTIFF EXHIBIT 46

BALABAN & KATZ

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3002

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3003 (Letterhead of Metro-Goldwyn-Mayer Pictures—Chicago, Ill.)

March 24, 1937.

Mr. Gardner
Balaban & Katz Corporation
177 North State Street
Chicago, Illinois

Dear Mr. Gardner:

This will confirm our telephone conversation of today with reference to the score charge for the Paradise Theatre, and we are reducing the same from $42.50 to $21.25 per picture.

Sincerely,
Loew's Incorporated
(Illegible)
Office Manager

JGK•AV

3004 (Letterhead of Metro-Goldwyn-Mayer Pictures—New York, N. Y.)

July 21, 1937.

Balaban & Katz Corporation,
175 North State Street,
Chicago, Illinois.

Dear Sirs:

This is to confirm our agreement in connection with the franchise agreement dated September 1, 1936, between Metro-Goldwyn-Mayer Distributing Corporation and Balaban & Katz Corporation, which agreement was thereafter assigned to Loew's Incorporated, as follows:

Article "31", the roadshows clause of said agreement, is amended to read as follows:

"31: It is understood and agreed that notwithstanding the limitation on the number of motion pictures to be roadshown provided in the annexed printed form of exhibition contract, Loew's shall have the right to exhibit and/or cause to be exhibited as roadshows at any time prior to the exhibition thereof hereunder not more than four (4) of the feature motion pictures distributed by

Loew's during the first fifty-two (52) week period of this agreement, and as to each of the following fifty-two (52) week periods of this agreement not more than four (4) of the feature motion pictures of the respective period unless the parties hereto mutually agreed upon a greater number; and that any motion picture roadshown shall be delivered by Loew's and exhibited hereunder as and when available to Exhibitor after the completion of the roadshowing of such motion picture throughout the United States, provided such motion picture is available for national release during the period of this agreement."

Will you please indicate your confirmation hereof by signing the enclosed copy under the word "Agreed".

Yours very truly,
Loew's Incorporated
By (Illegible)

Agreed:
Balaban & Katz Corporation
By Walter Immerman

3005 (Letterhead of Metro-Goldwyn-Mayer Pictures—Chicago, Ill.)

September 17, 1937.

Mr. Abe Kaufman,
Balaban & Katz Corp.,
175 North State St.,
Chicago, Illinois

Dear Mr. Kaufman:

This is to confirm our telephone conversation and agreement that the Varsity Theatre, Evanston, is to play in "A" week instead of "B" or "C", in view of which change the Teatro Del Lago, Wilmette, is to play in "B" week following the Varsity.

Please sign one copy of this communication signifying your agreement and understanding and return.

Sincerely yours,
Sam Shirley.

SAS:R

Accepted: Balaban & Katz Corporation,
By: A. Kaufman

3006 (Letterhead of Metro-Goldwyn-Mayer Pictures—Chicago, Ill.)

September 22, 1937.

Mr. A. J. Kaufman
Balaban & Katz Corporation
175 North State Street
Chicago, Illinois

Dear Mr. Kaufman:

Referring to our conversation of yesterday, because of the confusing manner in which the clearance for the Tivoli and the Southtown is written in the franchise as it relates to Hammond and Gary first-runs, the following is our understanding of this clearance, and which you confirmed over the telephone:

Such pictures as play in the Tivoli and do not play in the Southtown repeat on the Tivoli, become available first-run Hammond and Gary the week following the Tivoli engagement.

Such pictures as play first or second "A" week in the Tivoli Theatre and then repeat in the Southtown in the second or third "A" week of release, become available first-run Hammond and Gary the week following the Southtown engagement.

Such pictures as play in the Tivoli third week of "A" release and which you may elect to play in the Southtown, are to be played in the Southtown the week following the Tivoli, in which event the first-run Hammond and Gary may play with the Southtown. The Southtown sacrifices any clearance over first-run Hammond and Gary because of the Tivoli having played the picture in the last week of "A" release.

So that there can be no misunderstanding in this matter, will you please sign and return the attached copy of this letter?

Sincerely,

Sam Shirley.

SAS:C

3007 (Letterhead of Metro-Goldwyn-Mayer
(Pictures—Chicago, Ill.)

Mr. Walter Immerman, December 6, 1937.
Balaban & Katz Corporation,
175 North State Street,
Chicago, Illinois.

Dear Mr. Immerman:

Referring to clearances set up in the franchise for the Belpark and Gateway Theatres, in order to avoid confliction, the playing position of the Belpark Theatre should be changed from pre-release "C" week, as it is now set up in the franchise, to "C" week, except on pictures played in Portage Park in First week, which pictures Belpark must play in First Week. The Gateway Theatre should be changed from pre-release "C", as it is now set up in the franchise, to pre-release "C" or pre-release "B".

The clearance for the Gateway Theatre should be changed from:

"Terminal not to play earlier than same week. Village of Park Ridge and Portage not to play earlier than 1st week general. Admiral and Casimir not to play earlier than 2nd week general. New Theatre being built on Milwaukee Avenue directly opposite this theatre to play in 2nd week if Gateway plays "B" and 3rd week if Gateway plays "C".

to:

"Terminal not to play earlier than "C" week. Village of Park Ridge and Portage not to play earlier than 1st week general. Admiral and Casimir not to play earlier than second week general. Times not to play earlier than 2nd week if Gateway plays "B", and 3rd week if Gateway plays "C".

Please sign all copies of this letter to signify your knowledge and acceptance of the changes mentioned above.

Sincerely,
Loew's Incorporated.
Sam Shirley.
District Manager.

Accepted, Approved and Countersigned at New York, N. Y.
Date 1/7/38
Loew's Incorporated.
By: (Illegible)
Sales Manager.

Approved W. Immerman
SAS:R

3008 (Letterhead of Metro-Goldwyn-Mayer Pictures—New York, N. Y.)

December 10, 1937.

Balaban & Katz Corporation,
175 No. State Street,
Chicago, Ill.

Dear Sirs:

This is to confirm the agreement between us in connection with the franchise agreement dated September 1, 1936, between you and Metro-Goldwyn-Mayer Distributing Corporation, which agreement was heretofore assigned to Loew's Incorporated, as follows:

1. The Will Rogers Theatre, and the Cine Theatre, both in the City of Chicago, are added to the "Houses Outside Loop" covered by said franchise agreement, commencing with our 1937-38 product and extending for the balance of the term of said franchise agreement.

As to the Will Rogers Theatre:

The commitment of feature motion pictures of each of such four seasons is thirty-nine (39), each to be played 3 or 4 days, for which you are to pay us (in addition to a score charge per feature of Five ($5.00) dollars per day) as minimum guarantee Eight thousand seven hundred ($8700.00) dollars.

39 Trailers—For each Trailer you agree to pay Four ($4.00) dollars.

As to each 52-week period you are to use the following one-reel and two-reel short product:

Twelve (12) 2-reel subjects, 2 or 2 days, Twenty-six ($26.00) dollars each—Five ($5.00) dollars for each additional day.

Thirteen (13) Cartoons, 2 or 3 days, Eighteen ($18.00) dollars each.

Twelve (12) Traveltalks, 2 or 3 days, Fourteen ($14.00) dollars each.

Twelve (12) Our Gang Comedies, 1 or 2 days, Fifteen ($15.00) dollars each, Three ($3.00) dollars for each additional day.

3009 Forty-three (43) 1-reel subjects, 2 or 3 days, Eleven ($11.00) dollars each.

In the event this theatre operates on a single feature

policy, you are to use all of such short subjects; as long as this theatre operates on a double bill policy you are to use a minimum of fifty (50%) percent of the total number of short subjects of each season.

The commitment of short subjects herein provided for this theatre is understood to be in addition to the total commitments provided for in Article "16" of said franchise agreement.

You agree to use fifty-two (52) issues of News each season at Fifteen ($15.00) dollars each, such News to be 4 to 6 days old, starting date October 3, 1937.

The minimum admission prices for the Will Rogers theatre are as follows:

If exhibited first week of Chicago general release—

Matinees	Children 10c	Adults 15c
Evenings	Children 10c	Adults 25c

If used "C" week of release—

Matinees	Children 10c	Adults 20c
Evenings	Children 10c	Adults 30c

If is agreed that the playing position and clearance for the Will Rogers Theatre are as follows:

Playing position: First week of Chicago general release when Portage Park Theatre plays in first week of release "C" week except on pictures played in Portage Park Theatre in first week of general release.

Clearance: Village of Park Ridge, Illinois, Patio, Milford, Embassy, Irving, Commodore, Drake, Rivoli and Portage Park, not to play earlier than first week of general release. Belpark "C" week, except on pictures played first week in Portage Park which pictures must play in Belpark in first week.

As to the Cine Theatre:

The commitment of feature motion pictures of each of such four seasons, is thirty-nine (39), each to be played 2 or 3 days, for which you are to pay us (in addition to a score charge per feature of Five ($5.00) dollars per day as minimum guarantee Four thousand two hundred seventy-five ($4275.00) dollars.

39 Trailers—For each Trailer you agree to pay Three ($3.00) dollars.

As to each 52-week period you are to use the following

one-reel and two-reel short product, each to be played 2 or 3 days:

Twelve (12) 2-reel subjects, Twenty-three ($23.00) dollars each.

Thirteen (13) Cartoons, Nine ($9.00) dollars each.

Twelve (12) Traveltalks, Seven ($7.00) dollars each.

Twelve (12) Our Gang Comedies, Fourteen ($14.00) dollars each.

Forty-three (43) 1-reel subjects, Six ($6.00) dollars each.

In the event this theatre operates on a single feature policy, you are to use all of such short subjects; as long as this theatre operates on a double bill policy you are to use a minimum of fifty (50%) percent of the total number of short subjects of each season.

The commitment of short subjects herein provided for this theatre is understood to be in addition to the total commitments provided for in Article "16" of said franchise agreement.

You agree to use fifty-two (52) issues of News each season at Ten ($10.00) dollars each, to be played 2 days, starting date September 24, 1937.

The minimum admission prices for the Cine Theatre are as follows:

Matinees	Children 10c	Adults 15c
Evenings	Children 10c	Adults 25c

It is agreed that the playing position for the Cine Theatre is First week of Chicago general release.

Said Eight thousand seven hundred ($8700.00) dollars minimum guarantee as to the Will Rogers Theatre and Four thousand two hundred seventy-five ($4275.00) dollars minimum guarantee as to the Cine Theatre are to be added to the minimum guarantee of Four hundred twenty-nine thousand three hundred ($429,300.00) dollars provided for "Houses Outside Loop" in Article "14" of said franchise agreement, so that the total minimum guarantee payable by you under said franchise agreement as to the feature product of each season commencing with 1937-38 for all "Houses Outside Loop" shall be

3011 Four hundred forty-two thousand two hundred seventy-five ($442,275.00) dollars, subject to change in accordance with the review and revision provided for in the next paragraph hereof. It is further agreed

that the additional film rental provided for in subdivision "(b)" of said Article "14" shall be based upon such increased minimum guarantee.

As to the Cine Theatre, it is agreed that on or about January 1st, 1938, there is to be a review of the results of the exhibition of our feature motion pictures at said theatre from the opening of the theatre down to that date, and the terms herein provided for features shall, if a change from those herein provided for be warranted, be changed by mutual agreement, or, if the parties hereto cannot agree thereon, by arbitration in the manner provided in the franchise agreement, such change if any to be retroactive to the opening of the said Cine Theatre. For the purpose of such review you agree to furnish us with a statement showing the gross receipts realized from and other necessary information pertaining to the exhibition of each of said feature motion pictures.

2. The commitment provided in said franchise agreement for the Paradise Theatre, one of the "Houses Outside Loop", is hereby increased from seventeen (17) to twenty-six (26), such increase to be retroactive to the beginning of the franchise agreement.

For each picture of each season in excess of said commitment of 26 exhibited in said Paradise Theatre, you agree to pay the following:

For each outstanding picture, 3 or 4 days, Five hundred ($500.00) dollars plus a score charge of Ten and 63/100 ($10.63) dollars; if played 7 days, Eight hundred fifty ($850.00) dollars with a score charge of Twenty one and 25/100 ($21.25) dollars.

For each regular picture, 3 or 4 days, Three hundred fifty ($350.00) dollars plus score charge of Ten and 63/100 ($10.63) dollars.

As to the provision for score charge in Article "14" of said franchise agreement, it is understood that as to each season the score charge for each picture exhibited at this theatre over and above twenty-six (26) shall be fifty (50%) percent of the score charge provided for this theatre in said franchise agreement.

3. As to the Covent Garden Theatre, you agree to pay the following for each picture in excess of the commitment of twenty-two (22) pictures per season provided for said Covent Garden Theatre in the franchise agreement.

this arrangement to be retroactive to the beginning of the franchise:

For Specials—2 or 3 days, One hundred thirty ($130.00) dollars each plus score charge of Two and 50/100 ($2.50) per day.

Regulars—2 or 3 days, Sixty-five ($65.00) dollars each plus score charge of Two and 50/100 ($2.50) dollars per day.

3012 4. As to the Varsity Theatre, Evanston, Ill., it is agreed that effective commencing with the 1937-38 product the commitment for each season of said Varsity Theatre shall be reduced from fifty-two (52) to twenty-six (26) pictures, and the playing position of said Varsity Theatre shall be "A", instead of "B" as set forth in the franchise agreement. If Varsity Theatre reverts to B-policy, original franchise commitment stands.

Please sign the attached copies hereof under the word "Agreed", whereupon said franchise agreement shall be deemed amended accordingly.

Very truly yours,
Loew's Incorporated
By G. M. Saunders,
Sales Manager.

Agreed:
Balaban & Katz Corporation
By Walter Immerman,
Vice President.

3013 Know All Men by These Presents

That Metro-Goldwyn-Mayer Distributing Corporation, a New York corporation, hereby assigns and transfers to Loew's Incorporated, a Delaware corporation, all its right, title and interest in and under the annexed five (5) year franchise agreement dated September 1st, 1936, between Metro-Goldwyn-Mayer Distributing Corporation and Balaban & Katz Corporation, and all its right, title and interest in and under that certain letter agreement dated September 1st, 1936, between Metro-Goldwyn-Mayer Distributing Corporation and Balaban & Katz Corporation, being supplementary to the aforesaid franchise agreement of the same date.

Loew's Incorporated hereby accepts said assignment and agrees to perform all of the obligations of Metro-

wyn-Mayer Distributing Corporation under the afore-
five (5) year franchise agreement and the supple-
ary letter agreement.

laban & Katz Corporation hereby acknowledges no-
of the foregoing assignment of said five (5) year
hise agreement and said supplementary letter agree-
and agrees to be bound thereunder to Loew's Incor-
ted in the place and stead of Metro-Goldwyn-Mayer
ributing Corporation.

Metro-Goldwyn-Mayer Distributing
Corporation
By (Illegible)
V. Pres.

Loew's Incorporated
By A. Lautman
vice-pres.

Balaban & Katz Corporation
By Walter Immerman
P.

ed, September 29, 1936.

September 1, 1936.

Metro-Goldwyn-Mayer Distributing Corporation,
1540 Broadway,
New York.

tlemen:

Referring to the agreement dated September 1, 1936,
ween Metro-Goldwyn-Mayer Distributing Corporation
Balaban & Katz Corporation, and particularly the
vision in said agreement relating to "Additional Re-
ts" realized from the exhibition of feature motion pic-
es in houses outside the Loop of Chicago, this is to
firm the understanding between us as follows:

"Additional Receipts" shall be computed by deducting
accumulated operating expenses from the accumulated
ss receipts, resulting from the exhibition of all Metro
ture motion pictures in said theatres outside the Loop:

Items comprising gross receipts and operating expenses, as well as the basis to be used in the respective computations, are to be only the following:

Gross Receipts

Admissions—Receipts from ticket sales (exclusive of ten cent service passes) less the amount of any and all state, federal and city taxes applicable to admissions collected by Exhibitor.

Sub-Tenant Rents—To be computed on the average weekly amount of rents received, allocated on the basis of tenths.

Interest Income—Shall not be included except as set forth under item of "7% On Investment" listed below.

Operating Expenses

Film Rental—Cost of all features, shorts, newsreels, etc., including Metro guarantee. Where a feature of another company is exhibited with the Metro feature, the actual cost of the other feature shall be included in operating expense. Also, cost of any pictures contracted for which are paid for but not played, and to be allocated on the tenths basis.

3015 Production—Cost of scenery, costumes, and producing of stage shows played in conjunction with Metro pictures; also shall include allocation of average weekly amount of ASCAP dues allocated on the basis of tenths.

Prizes—Cost, and shall include basic weekly amount of Bank night, Screeno, other Giveaway prizes, royalties, and salaries paid in connection therewith. This to apply only if such expense incurred on days Metro pictures are shown.

In addition to the above, if in any week the basic weekly amount is increased to start such Bank night or other prize, such added amount, pro rated over a period of 4 weeks, may be added to the basic weekly amount; but this to apply only if such additional expense is incurred on days Metro pictures are shown.

Talent Salaries, Transportation of Talent and Booking fees—Cost. This to apply only if such expense incurred on days Metro pictures are shown.

Orchestra Salaries—Cost, except that where musicians are employed on a weekly basis as a policy and not for a particular show, the actual weekly amount of salaries shall be allocated on the basis of tenths.

Stage Salaries—Cost, except that where stage hands are employed on a weekly basis as a policy and not for a particular show, the actual weekly amount of salaries shall be allocated on the basis of tenths.

House Salaries—Weekly cost, allocated on the basis of tenths.

Publicity Salaries (Unless included in "Management") —Weekly cost, allocated on the basis of tenths.

Publicity—Newspapers and Miscellaneous (unless included in "Management")—Weekly cost, allocated on the basis of tenths.

Traveling—Cost of traveling when applicable to the engagement of Metro pictures.

Telephone and Telegraph
Postage
Film Transportation
Electricity
Fuel, Water and Cooling
Repairs and Maintenance
Electric Light Bulbs
Supplies

Miscellaneous minor expenses—including other items not specifically set forth in this memorandum and which are generally allowed as miscellaneous in theatre operation
Average weekly amount, allocated on the basis of tenths.

3016 Uniforms
Insurance

Depreciation—as allowed by Price Waterhouse & Co.
Average weekly amount, allocated on the basis of tenths.

Bad Debts—Not to be included. (In the case of tenant rents, bad debts will be applied before arriving at average weekly amount mentioned previously herein.)

Management—Shall be actual but not to exceed 5% of the gross receipts as defined in this agreement.

Taxes—Average weekly amount of all real estate, personal property, social security, unemployment, taxes, and city licenses, allocated on the basis of tenths.

Closed House Expense—Other than that arising from the closing for major repairs or rehabilitation, shall be included.

Interest on Mortgages

Legal and Auditing (unless included in "Management")

Capital Stock & Franchise Taxes

The amount paid or accrued by the company operating the various theatres shall first be prorated to the respective theatres on the basis of the percentage of the net admissions from all theatres operated by the company and the resultant weekly amount shall be allocated on the basis of tenths.

7% on Investment—Average weekly amount allocated on the basis of tenths. This is to be computed by theatres, as follows:

Residual value of fixed assets on the 1st day of the third quarter of each year beginning June 28, 1936, and there shall be no revaluations.

Add: Any major additions, rehabilitations and remodelings completed during the third and fourth quarters of each year.

Deposits to secure contracts or lease deposits.

Less: Mortgages outstanding against such assets on the first day of the third quarter of each year.

Interest received on lease and other deposits, etc.

Unpaid indebtedness against such assets on the first day of the third quarter of each year.

7% shall be computed on the cost of any new theatre completed or acquired from the date of opening of said new theatre, less any mortgages on new acquisition at date of acquisition.

3017 Rent

1. Fixed Rent—Where the rent of the theatre is on a fixed annual basis, the average weekly amount of rental payable shall be allocated on the basis of tenths.
2. Percentage Rents—Where the rent of a theatre is based on a minimum guarantee against a percentage of the receipts, the amount of rent used for the purpose

of this computation shall be that percentage of the receipts as required by the lease applied to the gross receipts resulting from the exhibition of Metro feature pictures, unless the minimum rent only is payable for the lease year. If the minimum rent only is payable for the lease year, then the rental paid shall be allocated in the same manner as fixed rents, mentioned in paragraph No. 1 above.

3. Percentage Rents Based on Profits.—Where the additional rent is based on a percentage of profit, then the said rent so charged, shall be based on the computation of the "Additional Receipts" of the individual Metro engagements as computed in accordance with this agreement. It is understood that the additional film rental payable to Metro, under this agreement will not be taken as an operating expense in computing the additional rent. If no additional rental is payable, then only the fixed rent shall be included in the operating expense in the same manner as paragraph No. 1.

Where the first profits are paid as rent in lieu of a minimum rental, as in the case of the Norshore where the first $50,000 of profits are paid as rent, the Metro engagement shall be charged the average weekly amount of the first profits, allocated on the basis of tenths, and the additional profit over this amount will be handled as stated above.

4. Inter-Company Rents—These shall be eliminated, and taxes, ground rent (if any), depreciation, insurance, etc. shall be substituted therefor. This applies to houses such as the Belpark, Marbro, Granada, Uptown and others.

"Average Weekly Amount" as used above shall mean 1/52 of the actual income or expense credited or charged to the respective accounts during each fiscal year beginning on or about June 28, 1936, unless it shall be a 53-week period when it shall be 1/53.

"The basis of tenths" shall mean that each week shall be divided into ten units, except weeks having a holiday. The ten units shall be divided as follows:

Sunday	3/10
Saturday	2/10
Other week days	1/10 each

3018 In case of any week having a holiday falling on a day other than Sunday that week shall be on the basis of twelfths, and shall be divided as follows:

Holiday	3/12
Sunday	3/12
Saturday	2/12
Other week days	1/12

A holiday is defined as being any day on which holiday prices are charged.

Regarding the examination to be made by Messrs. Price Waterhouse & Co., it is understood that their work is to be confined to such test checks of the company's records and computations as they deem necessary in order to satisfy themselves as to the accuracy of the statements of "Additional Receipts" realized from the exhibition of Metro feature films to be submitted to Metro pursuant to the terms of agreement referred to previously herein. It is understood that Price Waterhouse & Co.'s report will be accepted as final by all parties to the agreement.

It is understood that the books of accounts are kept on an accrual basis.

To indicate your approval of the foregoing will you please sign the enclosed copy hereof under the word "Agreed".

Yours very truly,
Balaban & Katz Corporation
By Walter Immerman
V P

Agreed:
Metro-Goldwyn-Mayer Distributing Corporation
By M. Saunders

3019 Agreement entered into this 1st day of September, 1936, between Metro-Goldwyn-Mayer Distributing Corporation, a New York corporation, herein referred to as "Metro", party of the first part, and Balaban & Katz Corporation, a Delaware corporation herein referred to as "Exhibitor", party of the second part;

Witnesseth:

1: Metro hereby grants to Exhibitor, upon the terms and conditions herein stated, a license to exhibit as here-

in provided, in synchronism with recorded sound, at the theatres operated by Exhibitor in the Loop in the City of Chicago, Illinois, and outside the Loop in said City of Chicago, and in Evanston, LaGrange and Berwyn, Illinois, which theatres in the Loop are the United Artists, Roosevelt, Chicago, Apollo, Garrick and Oriental theatres and are sometimes herein referred to as "Loop Houses", and which theatres outside the Loop are those listed on the "Commitment Schedule" hereto annexed and are sometimes herein referred to as "Houses Outside Loop", all the feature motion pictures to be generally released by Metro in each fifty-two (52) week period during the term of five (5) years, the first fifty-two (52) week period to commence as to said Loop Houses, on September 1, 1936, and to commence, as to said Houses Outside Loop, with the date upon which the first feature motion picture available hereunder for exhibition in said Loop Houses becomes available for exhibition to each of the Houses Outside Loop; a minimum of seventy-five (75%) percent of Metro's Trailers of all the feature motion pictures licensed hereunder; the Junior Feature (short subject) motion pictures generally released by Metro during said term to the number thereof, as to each fifty-two (52) week period, hereinafter provided for; and the Newsreels generally released by Metro to the number of issues in each such fifty-two (52) week period and at the theatres of Exhibitor hereinafter provided for.

It is agreed that the feature motion pictures entitled The Great Ziegfeld, The Gorgeous Hussy, Kelly the Second, Picadilly Jim and Women Are Trouble, although released prior to September 1, 1936, are included in the feature motion pictures of the first fifty-two (52) week period to be furnished by Metro and exhibited by Exhibitor hereunder.

The license herein granted is under the respective copyrights of said feature and Junior Feature motion pictures, Trailers and Newsreels, and under any copyright which may be in force with respect to any matter included in such recorded sound.

Exhibitor hereby accepts such license, and agrees to comply with all the terms and provisions hereof.

2: It is agreed

(a) That any motion picture as to which Metro shall

be required to obtain the approval of the producer thereof or any other party, except a producer or company owned or controlled by Metro or under common ownership or control, to the terms and conditions of the licensing thereof, shall be excluded from this agreement, even though generally released by Metro during the period of this agreement, unless Metro obtains such approval to the exhibition thereof hereunder. Metro agrees to use its best efforts to obtain such approval.

3021 (b) That Exhibitor shall not be required to accept any "foreign" or "Western" pictures under this agreement.

The term "foreign" shall be deemed to mean a feature motion picture made in a country other than the United States of America, but no motion picture shall be deemed to be a "foreign" if such motion picture is made on a location outside of the United States with a director theretofore employed in the making of so-called American made motion pictures and with a cast in which the leading players shall have theretofore been employed in American made motion pictures.

The term "Western" shall be deemed to mean all so-called outdoor pictures commonly known and referred to in the motion picture industry as "Western," with a negative cost of not in excess of one hundred twenty-five thousand ($125,000) dollars.

(c) That reissues are excepted from this agreement and excluded, it being understood and agreed that any picture remade by Metro of any silent or sound picture at any time theretofore released by Metro or any other distributor, under the same or any other title, is not to be considered a reissue.

(d) That Metro may exhibit and/or license to any other exhibitor for exhibition in any manner Metro sees fit, free from any claim by Exhibitor thereto, any and all motion pictures excepted and/or excluded as herein provided.

3. Said feature motion pictures are licensed for first-run exhibition at said Loop Houses; and as to the Houses Outside Loop for the respective runs indicated on the "Commitment Schedule" hereto annexed.

4. It is understood and agreed that the commitments of feature motion pictures herein provided as to each fifty-two (52) week period, both as to Loop Houses and Houses

Outside Loop, are based upon a minimum of forty-four (44) and a maximum of fifty-two (52) features released by Metro in each fifty-two (52) week period.

Loop Houses.

Features:

5: It is agreed that thirty (30) of Metro's feature motion pictures of each fifty-two (52) week period, said thirty (30) features to be designated by Metro, shall be exhibited in the United Artists or Roosevelt theatre, subject to the following: All of the playing time of said United Artists theatre in each fifty-two (52) week period shall be consumed with the exhibition of such thirty (30) pictures, except for the playing time required for four (4) feature motion pictures released by United Artists Corporation and except in the event that Metro is not prepared to furnish a picture for exhibition at said United Artists theatre at a time when playing time is available thereat, Exhibitor may use such playing time for a picture released by some distributor other than Metro. Any and all of the thirty (30) feature motion pictures of each fifty-two (52) week period not exhibited at said United Artists theatre shall be exhibited at the Roosevelt theatre, unless it shall be mutually agreed that any such pictures shall be played in the Chicago theatre. In the event of change of policy of the Roosevelt theatre the pictures herein committed for the Roosevelt theatre may be exhibited at either the State-Lake or Oriental theatre, provided the policy of each of said theatres is the same as the present policy of the Roosevelt theatre.

3022

For the license herein granted with respect to said thirty (30) feature motion pictures of each fifty-two (52) week period, Exhibitor agrees to pay to Metro as follows:

For each such picture exhibited at the United Artists theatre or at the Roosevelt theatre—seventy (70%) per cent of all gross receipts of each week's exhibition at the respective theatre in excess of the theatre's actual operating expense of the respective week, such expenses to be subject to audit by Metro as hereinbefore provided. It is understood and agreed that in rendering such statement of operating expenses the rent item on the United Artists theatre is to be three thousand five hundred ($3,500) dollars per week. It is further understood and agreed that in ren-

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dering such statement of operating expenses the rent item on the Roosevelt theatre is to be three thousand six hundred twenty-one and 07/100 ($3,621.07) dollars, and this amount is not to be changed during the term of this agreement except as such amount is increased or decreased by changes in the amount of taxes and insurance.

As to each such picture exhibited at the Chicago theatre, the license fees to be paid are to be mutually agreed upon at the time the respective picture is booked for exhibition at such Chicago theatre, and if not then agreed upon 3023 the picture is to be exhibited and the terms for such picture are to be agreed upon between Mr. Barney Balaban (or another person designated by Exhibitor) for Exhibitor, and Mr. A. L. Lichtman (or another person designated by Metro) for Metro, and if they cannot agree shall be determined by arbitration in the manner hereinafter provided for.

As to each such picture exhibited at the Chicago theatre Exhibitor agrees to pay to Metro, in addition to the foregoing, a score charge of one hundred fifty ($150.00) dollars for each seven (7) days for each flat rental picture.

As to each motion picture hereby licensed for exhibition in said Loop Houses on a participating basis, Exhibitor agrees to furnish daily boxoffice statement each day, and immediately following the conclusion of the engagement thereof a complete settlement statement, it being agreed that if the engagement is for more than one (1) week settlement statement is to be finished at the end of each week.

6: As to each of said United Artists and Roosevelt theatres, it is agreed that if the gross receipts of the theatre during the first three (3) days of any week's engagement of any of said thirty (30) pictures equal or exceed two thousand ($2,000.00) dollars per day averages for such three (3) days, then such picture shall be held over for an additional week following that week. It is agreed that said control figure of two thousand ($2,000.00) dollars is to apply to the pictures of the first fifty-two week period, and is to apply to the pictures of each subsequent fifty-two week period except that if in any such subsequent period the operating expense of the theatre is increased such control figure shall be increased in the proportion to the increase of weekly operating expense of the respective theatre, but that no increase in the amount of rent paid by

the theatre shall be taken into account in determining the operating expense of the respective theatre.

7: Exhibitor agrees to expend in connection with
3024 the exhibition of each feature motion picture exhibited at either the United Artists or Roosevelt theatre one thousand ($1,000.00) dollars per week for newspaper advertising and theatre-front exploitation, such one thousand ($1,000.00) dollars to be considered part of the operating expense of the theatre for the week. Any expenditure in excess of such one thousand ($1,000.00) dollars for advertising and exploitation of any picture shall be by mutual agreement.

8: Exhibitor agrees to commence the exhibition of each feature motion picture in the Garrick or Apollo theatre not later than fourteen (14) days after national release date. As to such pictures as are designated to play in the Roosevelt theatre the Exhibitor agrees to commence the exhibition of each feature motion picture not later than immediately after the conclusion of the engagement of one additional picture after the one being exhibited in the Roosevelt theatre at the time the respective Metro picture is designated.

9: It is agreed that all of Metro's feature motion pictures of each fifty two week period, other than the thirty (30) hereinabove provided for, shall be exhibited at the Apollo, Garrick or Oriental theatre.

For the license herein granted with respect to such pictures, Exhibitor agrees to pay to Metro as follows:

As to the first fourteen (14) of such pictures available for exhibition at said Apollo, Garrick or Oriental theatre, if exhibited at the Apollo or Garrick theatre, seven hundred fifty ($750.00) dollars per picture for each seven (7) days, and if exhibited at the Oriental theatre, one thousand ($1,000.00) dollars per picture for each seven (7) days.

As to each remaining picture, whether exhibited at the Apollo, Garrick or Oriental theatre—seven hundred fifty ($750.00) dollars per picture for each seven (7) days.

3025 As to said feature motion pictures exhibited at said Apollo, Garrick or Oriental theatre, Exhibitor agrees to pay to Metro, in addition to the foregoing, a score charge of thirty-five ($35.00) dollars per picture for each seven (7) days.

If any feature motion picture exhibited at the United

Artists, Roosevelt or Chicago theatre is moved over to the Apollo or Garrick theatre for a continued run, Exhibitor agrees to charge the same admission prices as were charged at the theatre from which moved, and to pay to Metro twenty-five (25%) percent of the gross receipts of the engagement of each such picture at said Apollo or Garrick theatre.

10: It is agreed that payment of the license fees and score charge herein provided for feature motion pictures exhibited at Loop Houses is to be made on Saturday of the week following the conclusion of the engagement of the respective feature motion picture, provided that if an engagement is for more than one week payment is to be made on Saturday of the week following the end of each week's engagement.

11: As to Loop Houses and Houses Outside Loop, Exhibitor agrees to charge during the entire engagement of each of said feature motion pictures not less than the respective minimum admission prices at the respective theatres shown on the schedule hereto annexed and made part hereof headed "Admission Price Schedule."

Newsreels.

12: As to Loop Houses and Houses Outside Loop Exhibitor agrees to use the number of issues of Metro's newsreels, for the number of days and at the license fees, shown opposite the name of the respective theatre on the schedule hereto annexed and made part hereof headed "Newsreel Schedule."

Trailers.

13: As to Loop Houses and Houses Outside Loop, Exhibitor agrees to pay to Metro the amount per trailer
3026 shown on the "Trailer Schedule" hereto annexed and made part hereof.

Houses Outside Loop.

Features.

14: Exhibitor agrees to exhibit at each of said Houses Outside Loop in each fifty-two (52) week period the number of feature motion pictures specified on the schedule hereto annexed and made part hereof, headed "Commitment Schedule," each such motion picture to be exhibited for the number of days shown on said Schedule.

It is expressly agreed that as to any theatre whose commitment shown on said "Commitment Schedule" is fifty-two (52) pictures, Exhibitor may at its option eliminate pictures up to twenty-five (25%) percent of such commitment; but exercise of such option by Exhibitor shall not operate to decrease the amount of the guarantee of four hundred twenty-nine thousand three hundred ($429,300.00) dollars which Exhibitor is herein obligated to pay Metro.

For the license herein granted, with respect to the feature motion pictures of each fifty-two (52) week period, Exhibitor agrees to pay to Metro

(a) as a minimum guarantee the sum of four hundred twenty-nine thousand three hundred ($429,300.00) dollars, payment thereof to be made in fifty-two (52) equal weekly installments, the first installment to be paid on October 15, 1936; and

(b) in addition to said minimum guarantee, the following respective percentages of "additional receipts" realized from the exhibition of said feature motion pictures exhibited in each fifty-two (52) week period (the term "additional receipts" being deemed for the purpose of this provision to mean the cumulative gross receipts at all said Houses Outside Loop during the exhibition of said feature motion pictures in the respective fifty-two (52) week period over and above their total cumulative operating expenses on said pictures): twenty-five (25%) percent of the first ten (10%) percent of additional receipts; thirty (30%) percent of the next ten (10%) percent of additional receipts; thirty-five (35%) percent of the next ten (10%) percent of additional receipts; forty (40%) percent of the next ten (10%) percent of additional receipts; forty-five (45%) percent of the next ten (10%) percent of additional receipts, and fifty (50%) percent of all further additional receipts. Examples: Assuming that for the first 52-week period Exhibitor's gross receipts of the exhibition of said feature motion pictures at all of said Houses Outside Loop would have to be $1,500,000.00 to cover their operating expenses including said minimum guarantee of $429,300.00, if the total gross receipts of the exhibition of said feature motion pictures at all of said Houses Outside Loop for such first 52-week period were $1,650,000.00 (i. e., $150,000.00, or 10%, above the said $1,500,000.00) then in addition to said minimum guarantee Metro would be entitled to $37,500.00 of such additional $150,000.00; if the total gross receipts for

such period were $1,800,000.00 then in addition to said minimum guarantee Metro would be entitled to $82,500.00 viz.: $37,500.00—of the first additional $150,000.00 and $45,000.00 of the second additional $150,000.00; and if the total gross receipts for such period were $1,550,000.00 then in addition to said minimum guarantee Metro would be entitled to $12,500.00 of such additional $50,000.00.

In addition to the foregoing Exhibitor agrees to pay
3028 to Metro as to each feature motion picture exhibited at each of said Houses Outside Loop a score charge in the amount shown opposite the name of the respective theatre on the "Score Charge Schedule" hereto annexed and made part hereof; provided that as to the pictures of each fifty-two week period, the score charge for each picture exhibited at a particular theatre outside the Loop over and above the number of Metro's 1935-36 feature pictures committed to such theatre shall be fifty (50%) percent of the score charge provided for such theatre in annexed "Score Charge Schedule."

15: Exhibitor agrees to furnish to Metro not later than sixty (60) days after the date of availability of the last feature motion picture of each respective fifty-two (52) week period for the last run in said Houses Outside Loop a full accumulative itemized statement, duly certified by Price Waterhouse & Co., as to the operating expenses of the days on which Metro feature motion pictures were exhibited and showing the accumulative gross receipts from said Houses Outside Loop on said days, and at that time to pay Metro all moneys thereon shown due Metro. It is further agreed that the items to be allowed in computing the operating expense herein provided for as to Houses Outside Loop shall be actual and such as are approved and allowed by Price Waterhouse & Co.

15 A: It is agreed that the amount of said minimum guarantee of Four hundred twenty-nine thousand three hundred ($429,300.00) dollars is based upon Metro's generally releasing not less than forty-four (44) and not more than fifty-two (52) feature motion pictures in each fifty-two (52) week period; and that in the event that
3029 Metro generally releases less than forty-four (44) in any such period, the amount of such guarantee shall be proportionately reduced, that is, by 1 44th for each picture short of forty four (44) released.

It is further agreed that the amount of said minimum

guarantee of Four hundred twenty-nine thousand three hundred ($429,300.00) dollars is based upon the exhibition at the respective theatres in each fifty-two (52) week period of the number of feature motion pictures provided for on said Commitment Schedule"; and that with respect to each theatre whose commitment therein provided for is less than fifty-two (52) feature motion pictures in any fifty-two (52) week period, in the event that more feature motion pictures are exhibited at any such theatre in any such period than the commitment of such theatre provided for on said "Commitment Schedule", Exhibitor agrees to pay additional license fees for each such additional picture, the amount to be paid for each such picture over and above such commitment for the respective theatre to be negotiated and agreed upon at the time the respective picture is booked for exhibition in such theatre, and if not then agreed upon the picture is to be exhibited at such theatre and the terms for such picture are to be agreed upon between Mr. Barney Balaban (or another person designated by Exhibitor) for Exhibitor, and Mr. A. L. Lichtman (or another person designated by Metro) for Metro, and if they cannot agree shall be determined by arbitration in the manner hereinafter provided for.

3030 It is expressly agreed that the amount of said minimum guarantee of Four hundred twenty-nine thousand three hundred ($429,300.00) dollars is based upon the exhibition of the respective feature motion pictures at said respective theatres for not more than the respective number of days provided for in said "Commitment Schedule" hereto annexed and made part hereof, with the following exceptions: theatres playing in "A" playing position are to play seven (7) days; theatres playing in "B" playing position are to play a maximum of seven (7) days and a minimum of three (3) days; theatres playing in "C" playing position are to play a maximum of five (5) days and a minimum of one (1) day; and theatres in first week of release are to play a maximum of four (4) days and a minimum of one (1) day. It is understood and agreed that this proviso for different playing time than provided for in said "Commitment Schedule" is for the purpose of carrying out the intent of the parties hereto, which is to increase the possibility of Metro's realizing an overage above said minimum guarantee.

Junior Features—Loop Houses and Houses Outside Loop.

16: Exhibitor agrees to exhibit in said Loop Houses and Houses Outside Loop Junior Features generally released by Metro in each fifty-two (52) week period of which the total license fees for each such period, based upon the respective price per subject per theatre shown on the "Short Subject Schedule" hereto annexed and made part hereof, shall amount to at least Twenty-five thousand ($25,000.00) dollars. Said minimum commitment of Twenty-five thousand ($25,000.00) dollars is based upon the continuance at said theatres during the period of
3031 this agreement of the double feature policy now in effect thereat, and it is agreed that in the event said theatres go to a single feature policy the minimum commitment of Exhibitor, based upon the respective price per subject per theatre shown on said "Short Subject Schedule", as to the Junior Features generally released by Metro in each fifty-two (52) week period shall be Forty-four thousand ($44,000.00) dollars, instead of Twenty-five thousand ($25,000.00) dollars.

It is understood and agreed that Metro may at any time during the term of this agreement change any of the one-reel and/or two-reel series of short-subjects referred to on said "Short Subjects Schedule"; and further agreed that Metro may, if it so desires, cease the distribution of any and all short-subjects and/or News and/or Trailers at any time during the period of this agreement without in any wise affecting this agreement as respects all other motion pictures licensed hereunder.

17: It is agreed that payment of the license fees for Trailers and News, and of score charges, herein provided for both as to Loop Houses and Houses Outside Loop, shall be made Saturday of the week following the week in which the respective feature, Trailer or News is exhibited.

18: (a) As to Loop Houses, Exhibitor agrees to keep
3032 correct and complete books of account, vouchers, records and documents showing the gross receipts and operating expenses of each of the respective theatres during the engagement of each of the feature motion pictures licensed hereunder for exhibition on a participating basis, and that Metro, its accountants, agents, representatives and attorneys, shall have access at all times following the last day of exhibition of each such motion picture at the

respective theatre, and from time to time and as often as Metro may desire, to such books of account, vouchers, records and documents of the Exhibitor, to examine and audit said books of account, vouchers, records and documents. Such representatives of Metro shall have the right to inspect and compare all such books of account, vouchers, records and documents relating to said gross receipts and expenses, and Metro agrees that all information obtained by it in such audits shall be held strictly confidential, except in any litigation or arbitration proceedings with respect to this agreement.

19: It is agreed that clearance for the Loop Houses, as to Metro's pictures generally released in the first
3033 fifty-two (52) week period, shall be the same as for the pictures of Metro's 1935-36 season exhibited at said theatres, viz., the same as shown on the "Clearance Schedule" hereto annexed and made part hereof; and as to each subsequent fifty-two (52) week period shall be the same as the foregoing unless the parties hereto mutually agree upon other clearance as to the pictures of the respective fifty-two (52) week period.

As to Houses Outside Loop it is agreed that clearance as to the pictures of the first fifty-two (52) week period shall be the same as for the pictures of Metro's 1935-36 season, viz., the same as shown on the "Clearance Schedule" hereto annexed and made part hereof; and as to each subsequent fifty-two (52) week period shall (unless the parties hereto mutually agree upon other clearance as to the pictures of the respective fifty-two (52) week period) be the same as herein provided for.

20: The flat film rentals provided to be paid herein for features, short subjects, Trailers and Newsreels, respectively, exhibited at a flat rental fee, and guarantees herein provided for, and the expenses and costs of operation of the theatres, are both based upon the present value, in gold, of lawful money of the United States of America. If during the term of this agreement the value, in gold, of said money shall (computed upon an average for any three (3)
3034 consecutive months) change by Sixteen and two-thirds (16 2/3%) percent or more from such present value then upon the request of either party the said flat film rentals and/or guarantees and/or the amount to be allowed for expenses and costs of operation of the said respective theatres shall be revised accordingly to the mutual satisfaction

of the parties, or, upon the failure of the parties mutually so to agree within five (5) days after the request of either or both for such revision shall have been made, then such revision, if any, and the amount thereof shall be determined by arbitration in the manner herein provided, and if requests are so pending by both parties, both requests shall be determined at the same arbitration and by the same arbiters. It is further agreed that where any such revision has been so made, either party shall thereafter have the same opportunity in the same manner to request revision because of any later change of Fifteen (15%) percent or more (computed upon an average for any three (3) consecutive months) from the value in gold of said money which was the basis of the prior determination, and if this is not so mutually agreed upon then this shall as above provided be so determined by arbitration, but no revision shall in any event, in the case of either flat film rentals or guarantees or expenses and costs of operation of said theatres, result in reducing any of the same below that now fixed or provided for in this agreement.

21. It is agreed that the payment by Exhibitor or acceptance by Metro of any sum tendered by the Exhibitor in full payment of any license fee payable hereunder shall not estop or prevent Exhibitor or Metro, as the case may be, from thereafter disputing the correctness of the amount of each such respective payment.

3035 22: It is agreed that if during the term of this agreement Metro shall generally release any of the motion pictures licensed hereunder, produced in conjunction with television, or with any other new method involving a major change in the technique of production and/or exhibition, then and in that event the license granted to the Exhibitor hereunder shall be deemed to include such motion pictures, provided, however, that such license shall be subject to any and all limitations and restrictions imposed upon Metro as a condition of licensing the exhibition thereof, by reason of patent rights, copyrights and any and all other rights in connection with the production, distribution and/or exhibition of such motion pictures with television, etc., and any and all terms and conditions pertaining to the exhibition of the motion pictures so produced not set forth in this agreement shall be determined by negotiation between Metro and Exhibitor, from time to time, as the occasion requires, and if such negotiation shall re-

sult in a disagreement, the matter shall be determined by arbitration in the manner herein provided. The license fees and other charges to be paid by the Exhibitor to Metro in respect of the exhibition of such motion pictures shall likewise be determined by negotiation, or in the event of disagreement, by such arbitration.

23: Arbitration: The manner of any arbitration herein provided for shall be as follows: Either party shall appoint an arbitrator and give notice of such appointment to the other party. The other party within five (5) days after receipt of such notice of appointment shall appoint a second arbitrator and give notice of such appointment to the other arbitrator and to the other party, and the 3036 arbitrators shall meet forthwith, and in the event that the two arbitrators, named do not agree upon the matter or matters submitted to them within five (5) days after the appointment of the second arbitrator such two arbitrators shall appoint a third arbitrator and the decision and award of any two of such three arbitrators shall be final and binding and conclusive upon the parties thereto. If either party hereto fails to appoint the respective arbitrator to be appointed by such party within five (5) days after the receipt of written notice from the other party so to do, and or if such two (2) arbitrators appointed by the respective parties shall fail to appoint such third arbitrator, (in case such arbitrators fail to agree as aforesaid) within five (5) days after request in writing so to do by either party hereto, then and in any such event, such then unappointed arbitrator may be appointed by the then President of the Chamber of Commerce of the State of New York upon five (5) days' notice of application for such appointment given by the party requesting the same to the other party hereto. If such Chamber of Commerce shall not then be in existence, or if the then President thereof shall not appoint such third arbitrator, such then unappointed arbitrator shall be appointed by the Chief Judge of the Court of Appeals of the State of New York upon such five (5) days' notice. The arbitrators appointed hereunder shall proceed with all reasonable dispatch and consider and determine the matter(s) referred to them for determination and the evidence submitted to them, and may require the parties to appear and produce such accounts, documents, and witnesses as the arbitrators may require, and the arbitrators may take into consideration

conditions existing at the time being in the motion picture industry and in the territory. It is agreed that any
3037 determination, decision and or award of any such arbitrators shall become a part of this agreement and shall be susceptible of enforcement hereunder by any appropriate proceedings at law or in equity. The hearing of any such arbitration shall be in the City of New York unless the parties agree in writing that such hearing be had in some other place. In the arbitration of any matter herein provided to be determined by arbitration in the event the parties hereto are unable to agree, all necessary expenses of the arbitrators and all other necessary expenses and cost of such arbitration shall be borne and discharged in equal proportion by Metro and Exhibitor.

24. All notices hereunder (except notices of availability, notices of exhibition dates, notices of designation of pictures, and similar notices to Exhibitor from Metro's exchange, which may be sent by ordinary mail) shall be served only by registered mail, addressed, when intended for Exhibitor, to Balaban & Katz, 175 North State Street, Chicago, Illinois, and when intended for Metro, to Metro-Goldwyn-Mayer Distributing Corporation, 1540 Broadway, New York City, New York. If either party shall change such address, such party shall give written notice to the other party to that effect, and until so given the address of such party above specified shall be deemed the address of such party for the giving of any notice hereunder.

25: It is understood and agreed that wherever reference is made in this agreement to "one-reel" short product same means a subject of not less than approximately seven hundred (700) linear feet and not more than approximately one thousand (1000) linear feet; and that wherever reference is made to "two-reel" short product same means a subject of not less than approximately fifteen hundred (1500) feet and not more than approximately two thousand (2000) feet.

3038 26: Exhibitor hereby expressly waives any privilege to exclude motion pictures as provided in clause Twenty-third of the printed form of contract hereto annexed and made part hereof.

27: It is agreed that this agreement shall be construed and interpreted according to the laws of the State of New York.

28: It is agreed that the terms and conditions hereof,

together with the terms and conditions of the annexed printed forms of exhibition contract for the respective product—features, short subjects, trailers and newsreels—constitute the agreement between Exhibitor and Metro, it being understood and agreed that if any of the provisions of any of such printed forms shall be contrary to or inconsistent with any of the provisions hereof the provisions hereof shall control.

29: If Exhibitor shall file a voluntary petition in bankruptcy or be adjudicated a bankrupt or be adjudged insolvent by any State or Federal Court of competent jurisdiction, or if a Receiver shall be appointed for substantially all of its assets and such appointment be not vacated within sixty (60) days from the date thereof, then and upon the happening of any of such events and at any time within sixty (60) days thereafter Metro may (in addition to any other rights and remedies that Metro may have in such respect) terminate the license herein granted as respects any and all motion pictures not theretofore exhibited hereunder, by giving written notice to the Exhibitor or Exhibitors affected of its intention so to do.

If Metro shall file a voluntary petition in bankruptcy or be adjudicated a bankrupt or be adjudged insolvent by any State or Federal Court of competent jurisdiction, or 3039 if a Receiver shall be appointed for substantially all of its assets and such appointment be not vacated within sixty (60) days from the date thereof, then and upon the happening of any of such events and at any time within sixty (60) days thereafter Exhibitor may (in addition to any other rights and remedies that Exhibitor may have in such respect) terminate this agreement as respects any and all motion pictures not theretofore exhibited hereunder, by giving written notice to Metro of its intention so to do.

30: Any waiver by either party of any of its rights hereunder shall not be deemed a continuing waiver and shall not estop or prevent such party from thereafter enforcing such rights.

31: It is understood and agreed that notwithstanding the limitation on the number of motion pictures to be roadshown provided in the annexed printed form of exhibition contract, Metro shall have the right to exhibit and or cause to be exhibited as roadshows at any time prior to the exhibition thereof hereunder not more than four (4) of the

feature motion pictures distributed by Metro during the first fifty-two (52) week period of this agreement, and as to each of the following fifty-two (52) week periods of this agreement the number of feature motion pictures which Metro shall have the right to exhibit or cause to be exhibited as roadshows shall be mutually agreed upon between Exhibitor and Metro prior to each such subsequent fifty-two (52) week period; and that any motion picture roadshown shall be delivered by Metro and exhibited hereunder as and when available to Exhibitor after the completion of the roadshowing of such motion picture throughout the United States, provided such motion picture is available for national release during the period of this agreement.

32: It is understood and agreed that this agreement is entire and complete, and that no representations or warranties of any kind have been made by either party hereto to the other, except as in this agreement expressly set
3040 forth. It is agreed that neither party is the agent or partner of the other party, and neither party hereto shall be liable for or bound by any representations of or by the other party.

33. It is agreed that upon the execution and delivery hereof any and all contracts for feature and junior feature motion pictures, Newsreels and Trailers heretofore entered into between the parties hereto for any of the theatres covered by this agreement shall be deemed terminated and of no force or effect as to the motion pictures, Newsreels and Trailers covered by such contracts which are generally released by Metro commencing September 1, 1936, and that all such product shall be furnished by Metro and exhibited by Exhibitor under and pursuant to the terms and conditions hereof.

34. It is agreed that Metro shall have the right at any time during the term hereof to assign this agreement to Loew's Incorporated or any subsidiary, affiliated or associated corporation of Loew's Incorporated.

35. Exhibitor agrees that it will not without the prior written consent of Metro reduce admission prices for the engagement of any feature motion picture covered by this agreement below those shown on the annexed "Admission Price Schedule".

It is understood that the availability, (Pre-release "A", "B", etc.) set forth on said Admission Price Schedule is

based upon the admission prices therein set forth for the respective theatres for the respective week of release, and agreed that in the event Metro permits the exhibition by any other exhibitor of any of the feature motion pic-
3041 tures covered by this agreement at lower admission price for the respective week of release, then Exhibitor shall not be required to obtain Metro's consent to a similar reduction of its admission price for the engagement of any such pictures.

36. It is agreed that if during the term of this agreement more than fifty (50%) percent of the Houses Outside Loop discontinue double features and adopt a single feature policy and maintain such single feature policy for a continuous period of at least thirty (30) days, the entire deal herein set forth for feature motion pictures for all Houses Outside Loop may be renegotiated, and if within thirty (30) days after such single feature policy has been in effect in all of said more than fifty (50%) percent of the Houses Outside Loop the parties hereto shall not have entered into a new agreement for features for all Houses Outside Loop, then the present agreement shall remain in full force and effect. If within such thirty days the parties hereto shall have entered into a new agreement for features for all Houses Outside Loop, then Metro shall be free to license to others all features not covered by such new agreement. In the event the parties hereto shall have entered into a new agreement and subsequent thereto said more than fifty (50%) percent of the Houses Outside Loop shall discontinue the single feature policy and readopt and maintain a double feature policy for a continuous period of thirty (30) days, then and in such case the present agreement between the parties hereto as to all Houses Outside Loop shall be reinstated, subject to any and all such
3042 licenses to others which Metro may have entered into.

In Witness Whereof the parties hereto have caused this agreement to be signed, executed and delivered the day and date first above written.

Metro-Goldwyn-Mayer Distributing Corporation (L.S.)
By (Illegible)

Balaban & Katz Corporation (L.S.)
By (Illegible)

3043 **PLAINTIFF EXHIBIT 46**

"NEWS REEL" SCHEDULE

Town	Theatre	No. Issues	No. Days	Price per Issue	Starting Date
Chicago, Ill.	Belmont	52	2	$15 00	Fri 8/14/36
	Belpark	52	2	15 00	Fri 8/14/36
	Biltmore	52	2	10 00	Fri. 8/14/36
	Congress	52	2	20 00	Fri. 8/14/36
	"	52	3	30 00	Sun. 8/16/36
	Covent Garden	52	2	15 00	Wed. 8/19/36
	Manor	52	2	15 00	Fri. 8/14/36
	Gateway	52	2	15 00	Fri. 8/14/36
	Granada	52	3	30 00	Wed. 8/19/36
	Lakeside	52	1	7 50	Sat. 8/15/36
	"	52	2	10 00	Thu. 9/13/36
	Maryland	52	3	22 50	Sun. 8/16/36
	Paradise	52	4	30 00	Sat. 9/26/36
	Senate	52	2	10 00	Fri. 8/14/36
	Terminal	52	3	22 50	Sun. 8/16/36
	United Artists	52	3	75 00	Wed. 8/19/36
	" "	52	4	75 00	Sat. 8/15/36
(Berwyn, Ill.)	Berwyn	52	2	15 00	Fri. 8/14/36
(Evanston, Ill.)	Varsity	52	2	15 00	Fri. 8/14/36

3044 **PLAINTIFF EXHIBIT 46**

"TRAILER" SCHEDULE

Town	Theatre	Trailer Price
Chicago, Ill.	Uptown	$12 50
	Tivoli	12 50
	Marbro	12 50
	Southtown	12 50
	Granada	12 50
	Riviera	12 50
	Harding	7 00
	Paradise	7 00
	Century	7 00
	Congress	4 00
	Belmont	4 00
	Belpark	4 00
(Berwyn, Ill.)	Berwyn	4 00
	Biltmore	3 00
	Central Park	4 00
	Covent	3 00
	Crystal	3 00
	Gateway	4 00
(La Grange, Ill.)	La Grange	4 00
	Lakeside	3 00
	Maryland	4 00
	Manor	4 00
	Norshore	4 00
	Nortown	4 00
	Pantheon	4 00
	Regal	7 00
Chicago, Ill.	Senate	4 00
	State	4 00
	Terminal	4 00
	Tower	4 00
(Evanston, Ill.)	Varsity	7 00

"TRAILER" SCHEDULE (Con't.)—Page 2

3045 LOOP HOUSES

As to each Loop House, $12.50 per Trailer for First week and $5.00 per Trailer for each additional week.

3046

"COMMITMENT" SCHEDULE (Houses Outside Loop)

Town	Theatre	Playing Position	No. Days	Featute Commitment (No. of pictures)
Chicago, Ill.	Uptown	A	7	26
	Tivoli	A	7	26
	Marbro	A	7	26
	Southtown	A	7	26
	Granada	A or B	7	26
	Riviera	A or B	3-4	26
	Harding	A or B	7	26
	Paradise	A or B	3-4	17
	Century	B or C	3-4	30
	Congress	B or C	3-4	40
	Belmont	B or C	3-4	52
	Belpark	C	3-4	52
(Berwyn, Ill.)	Berwyn	C	3-4	52
	Biltmore	C or 1st	2-3	52
	Central Park	C	3-4	52
	Covent	C or 1st	2-3	22
	Crystal	C or 1st	3-4	52
	Gateway	C	3-4	52
(La Grange, Ill.)	La Grange	C	2-3	52
	Lakeside	1st	2-3	52
	Maryland	B or C	3-4	52
	Manor	C	3-4	52
	Norshore	B or C	3-4	52
	Nortown	B or C	3-4	52
	Pantheon	B or C	3-4	52
	Regal	C	3-4	52
3047				
Chicago, Ill.	Senate	B or C	3-4	52
	State	C	3-4	52
	Terminal	C	3-4	52
	Tower	A, B or C	3-4	52
(Evanston, Ill.)	Varsity	B or C	3-4	52

3048 PLAINTIFF'S EXHIBIT 00

ADMISSION PRICE SCHEDULE

Theatre	Weekdays	Ch.	Ad.	Saturdays	Ch.	Ad.	Sundays and Holidays	Ch.	A
United Artists and Roosevelt	Opening to 1 P.M.	15	25	Same as Weekdays			Opening to 5 P.M.	15	3
	1 P.M. to 6 P.M.	15	30				5 P.M. to closing	15	5
	6 P.M. to closing	15	50				Prices are changed wi		
Chicago							each picture in U. A. a Roosevelt.		
Chicago	Opening to 3 P.M.	15	25	Same as Weekdays			Opening to 5 P.M.	15	
	3 P.M. to 6:30 "	15	30				5 P.M. to closing	15	
	6:30 to closing	15	50						
Apollo and Garrick	Opening to 1 P.M.	10	25	Same as Weekdays			All day	10	
	1 P.M. to 6:30 "	10	30						
	6:30 to closing	10	50						
Oriental	Opening to 6:30 P.M.	10	25	Same as Weekdays			All day	10	
	6:30 to closing	10	40						

PRE-RELEASE "A"			
Granada, Marbro, Riviera, Southtown, Tivoli, Uptown	Matinee:	Children 10¢	Adults 30¢
	Evening:	Children 10¢	Adults 50¢
PRE-RELEASE "B"			
Century, Harding, Nortown, Paradise, Varsity	Matinee:	Children 10¢	Adults 25¢
	Evening:	Children 10¢	Adults 40¢
PRE-RELEASE "C"			
Belmont, Belpark, Berwyn, Central Park, Congress (B or C), Gateway, La Grange, Manor, Maryland, Norshore, Pantheon, Regal, Senate, State, Terminal, Tower	Matinee:	Children 10¢	Adults 20¢
	Evening:	Children 10¢	Adults 30¢
FIRST WEEK			
Biltmore, Covent, Crystal, Lakeside	Matinee:	Children 10¢	Adults 15¢
	Evening:	Children 10¢	Adults 25¢
THIRD WEEK			
New Lain	Matinee:	Children 10¢	Adults 15¢
	Evening:	Children 10¢	Adults 20¢

3049 PLAINTIFF EXHIBIT 46

"SCORE CHARGE" SCHEDULE (Houses Ouside Loop)

Town	Theatre	Score Charge Price
Chicago, Ill.	Uptown	$100 00 per picture
	Tivoli	100 00 " "
	Marbro	87 50 " "
	Southtown	42 50 " "
	Granada	42 50 " "
	Riviera	21 25 " "
	Harding	21 25 " "
	Paradise	42 50 " "
	Century	7 50 per day
	Congress	5 00 " "
	Belmont	5 00 " "
	Belpark	5 00 " "
(Berwyn, Ill.)	Berwyn	5 00 " "
	Biltmore	5 00 " "
	Central Park	5 00 " "
	Covent	5 00 " "
	Crystal	5 00 " "
	Gateway	5 00 " "
La Grange, Ill.)	La Grange	5 00 " "
	Lakeside	5 00 1 or 2 days
	Maryland	5 00 per day
	Manor	7 00 " "
	Norshore	50 " "
	Nortown	00 " "
	Pantheon	00 " "
	Regal	00 " "
Chicago, Ill.	Senate	5 0 " "
	State	5 0 " "
	Terminal	5 0 " "
	Tower	6 0 " "
Evanston, Ill.)	Varsity	5 00 " "

Town	Theatre	2-Reel Subjects Musical Revues and Crime Series No. Days	Price	1-Reel Cartoons Technicolor No. Days	Price	1-Reel Fitzp. Technicolor Traveltales No. Days	Price	1-Reel Gangs No. Days	Price	Other 1-Reel Subjects No. Days	Price
				Continuous Run Pictures							
icago	United Artists or Roosevelt	1st week	$250.	1st week	$156.	1st week	$125.	1st week	$150.	1st week	$100.
		each add. wk.	126.	each add. wk.	156.	each add. wk.	125.	each add. wk.	75.	each add. wk.	100.
				Chicago Theatre							
	Chicago	7	250.	7	156.	7	125.	7	150.	7	100.
				With Secondary Pictures							
	Apollo or Garrick	7	126.	7	78.	7	62.	7	75.	7	38.
		each add. wk.	62.50	each add. wk.	78.	each add. wk.	62.	each add. wk.	38.	each add. wk.	38.

Town	Theatre	2-Reel Subjects Musical Revues and Crime Series No. Days	Price	1-Reel Cartoons Technicolor No. Days	Price	1-Reel Fitzp. Technicolor Traveltales No. Days	Price	1-Reel Gangs No. Days	Price	Other 1-Reel Subjects No. Days	Price
icago (clear of Pantheon and Sheridan)	Lakeside	2	$19.	2	$12.	2	$9.	2	$11.	2	$6.
	Manor	2	16.	2	9.	2	7.	2	10.	2	6.
		each add. day	5.					each add. day	3.		
	Marbro	7	187.	7	117.	7	94.	7	113	7	75.
	Maryland	2	23.	2-3	18.	2-3	14.	2	14.	2-3	11.
		3	33.					3	20.		
	Norshore	2	33.	2-3	18.	2-3	14.	2	20.	2-3	11.
		3	47.					3	20.		
	Nortown	2	26.	2-3	18.	2-3	14.	2	15.	2-3	11.
		each add. day	5.					each add. day	3.		
	Pantheon	2	14.	1-2	9.	1-2	7.	2	8.	1-2	6.
		each add. day	5.					each add. day	3.		
	Paradise	3-4	94.	3-4	59.	3-4	47.	3-4	56.	3-4	37.
	Regal	3-4	31.	3-4	10.	3-4	14.	3-4	19.	3-4	11.
	Riviera	3-4	94.	3-4	59.	3-4	47.	3-4	38.	3-4	38.
	Senate	2	33.	2-3	18.	2-3	14.	2	20.	2-3	11.
		3	47.					3	28.		
	Southtown	7	125.	7	78.	7	63.	7	75.	7	80.
	State	2	26.	2-3	18.	2-3	14.	2	15.	2-3	11.
		each add. day	5.					each add. day	3.		
	Terminal	2	23.	2	12.	2	9.	2	14.	2	7.
		3	28.	each add. day	3.	each add. day	2.	3	17.	each add. day	2.
	Tivoli	7	188.	7	117.	7	94.	7	112	7	75.
	Tower	2-3	62.	2-3	39.	2-3	31.	2-3	38.	2-3	26.
	Uptown	7	188.	7	117.	7	94.	7	112	7	75.
anston	Varsity	2-3	26.	2-3	18.	2-3	14.	2-3	15.	2-3	11.
		each add. day	5.					each add. day	3.		

Plaintiff's Exhibit No. 46.
1635

Town	Theatre	2-Reel Subjects Musical Revues and Crime Series No. Days	Price	1-Reel Cartoons Technicolor No. Days	Price	1-Reel Fitzp. Technicolor Traveltales No. Days	Price	1-Reel Gangs No. Days	Price	Other 1-Reel Subjects No. Days	Price
Chicago	Belmont	2	$33.	2-3	$18.	2-3	$14.	2	$20.	2-3	$11.
		3	47.					3	28.		
	Belpark	2	26.	2-3	18.	2-3	14.	2	18.	2-3	11.
		each add. day	5.					each add. day	3.		
Berwyn	Berwyn	2-3	21.	2-3	18.	2-3	14.	2-3	18.	2-3	11.
		each add. day	5.					each add. day	3.		
Chicago	Biltmore	2-3	23.	2-3	9.	2-3	7.	2-3	14.	2-3	6.
	Central Park	2	33.	2-3	18.	2-3	14.	2	20.	2-3	11.
		3	47.					3	28.		
	Century	3-4	47.	3-4	18.	3-4	14.	3-4	28.	3-4	11.
	Congress	3-4	38.	3-4	29.	3-4	23.	3-4	22.	3-4	19.
(clear on Century)	Covent Garden	2	26.	2-3	18.	2-3	14.	2	16.	2-3	11.
		each add. day	5.					each add. day	8.		
(repeat on Century)		1-2	19.	2-3	12.	2-3	9.	1-2	11.	2-3	7.
	Crystal	2	23.	2-3	18.	2-3	14.	2	14.	2-3	11.
		each add. day	5.					each add. day	5.		
	Gateway	2	26.	2-3	18.	2-3	14.	2	15.	2-3	11.
		each add. day	5.					each add. day	8.		
	Granada	7	187.	7	117.	7	94.	7	113.	7	75.
	Harding	3-4	94.	3-4	89.	3-4	47.	3-4	56.	3-4	88.
LaGrange	LaGrange	2-3	14.	2-3	9.	2-3	7.	2-3	8.	2-3	6.
		each add. day	5.					each add. day	5.		
Chicago	Lakeside	2	13.	2	8.	2	6.	2	7.	2	5.
(repeat on Pantheon and Sheridan)											

3053 "Clearance" Schedule

B & K Chicago Theatres, 1936-37 Season—Clearance
Theatre—Chicago, United Art., Roosevelt, Apollo,
Garrick. Playing Position—Loop.

No theatre in state of Illinois, north of latitudinal line running parallel to Springfield, excluding Springfield, Quincy, Galena, Illinois, or in state of Indiana in County of La Porte, Pulaski, Porter, Jasper, Starke, Lake or Newton, to play prior to or during engagement in these theatres. No theatre in Lake, Dupage, Cook or Kane County, Ill. to play until last day of exhibition in these theatres. Uptown, Riviera, Granada, Marbo, Paradise, Tivoli, Harding, Tower, Southtown, Capitol and Avalon may play in fourth, fifth or sixth week after last day of exhibition in loop. Also second run in loop may play immediately following "A" week. Monroe, Rialto, Casino and Eastime may play prerelease "C", general release.

Theatre—Marbro or Paradise. Playing Position—"A".

This theatre to play in 4th, 5th or 6th weeks after last day of exhibition in loop. If this theatre plays in 4th week after last day of exhibition in loop, no theatres in west side, northwest side or southwest of Chicago (except Harding) or in northwestern, western or southwestern part of Cook County Ill., to play until 14 days after last day of exhibition in this theatre. If this theatre plays in 5th week after last day of exhibition in the loop, no theatre in above mentioned sections to play until 14 days after last day of exhibition in this theatre. If this theatre plays in 6th week after last day of exhibition in loop, no theatre in above mentioned sections to play until 7 days after last day of exhibition in this theatre.

Theatre—Southtown. Playing Position—"A".

This theatre is to play in the 4th, 5th or 6th week after last day of exhibition in loop. If this theatre plays in 4th week after last day of exhibition in loop, no theatre in south or southwest sections of Chicago or in the southern part of Cook County, outside the city limits of Chicago or in Lake County, Indiana, to play until 14 days after last day of exhibition in this theatre. If this theatre plays in 5th week after last day of exhibition in loop, no theatres in above mentioned sections, except Tivoli, to play until 14

days after last day of exhibition in this theatre. If this theatre plays in 6th week after last day of exhibition in loop, no theatre in above mentioned sections, except Tivoli, to play until 7 days after last day of exhibition in this theatre. This theatre to have the privilege of repeating *Tivoli pictures 7 days after Tivoli.* Avalon to play in same week on pictures that play the Tivoli. Clearance on Capitol or Stratford. E.A.R., Englewood, Harvard, Regent, Triangle, Halfield, not to play earlier than 1st week general. West Englewood, Highland, Cosmopolitan and Peoples not to play earlier than 9th week after last day of exhibition in loop. On pictures that play this house, the Lynn, Linden, National, Marlowe and Empress not to play earlier than 2nd week general. See change in Clearance.

Theatre—Tivoli. Playing Position—"A".

This theatre to play in 4th, 5th or 6th week after the last day of exhibition in loop. If this theatre plays in 4th week after last day of exhibition in loop, no theatre, except Southtown and Avalon, in south or southwest sections of Chicago or in the southern part of Cook County, outside the city limits of Chicago, or in Lake County, Indiana, to play until 14 days after last day of exhibition in this theatre. If this theatre plays in 5th week after last day of exhibition in loop, no theatre in above mentioned sections, except Southtown and Avalon, to play until 14 days after the last day of exhibition in this theatre. If this theatre plays in 6th week after last day of exhibition in loop, no theatres in above mentioned sections to play until 7 days after the last day of exhibition in this theatre. Capitol—Chicago, Gary, Indiana Harbor, and Hammond, Ind., may play immediately following the last day of exhibition at this theatre. Southtown, & Avalon, may play 7 days after last day of exhibition at Tivoli.

3054 Clearance B & K—Clearance.

Theatre—Uptown, Granada, Riviera. Playing Position—"A".

These theatres to play in 4th, 5th or 6th weeks after last day of exhibition in loop. If these theatres play in 4th week after last day of exhibition in loop, no theatres in North or northern part of Cook County, outside the city

limits of Chicago (except Harding) or in Lake County, Ill. (except Waukegan) to play until 14 days after the last day of exhibition in these theatres. If these theatres play in 5th week after last day of exhibition in loop, no theatres in above mentioned sections to play until 14 days *after last day of exhibition in* these theatres. If these theatres play in the 6th week after last day of exhibition in loop, no theatres in above mentioned sections to play until 7 days after last day of exhibition in these theatres.

Theatre—Nortown. Playing Position—"B".

This theatre to play in "B" week of release. If the Granada, Uptown or Riviera plays in 4th week after last day of exhibition in loop, this theatre to play 14 days after last day of exhibition in these theatres. If the above mentioned theatres play in 5th week after last day of exhibition in the loop, this theatre not to play before 14 days after last day of exhibition in these theatres. If above mentioned theatres play in 6th week after last day of exhibition in the loop, this theatre not to play before 7 days after last day of exhibition in these theatres. No theatres in north or northwest sections of Chicago (except Harding, Riviera, Granada and Uptown) or in the northern part of Cook County, outside of the city limits of Chicago, or in Lake County, Ill. (except Waukegan) to play prior to or during these weeks except the Sheridan, Century, Norshore, Pantheon, Congress and Varsity, which may play in the same week. Devon may play in "C" week. Ridge, Davis, Bertha and Calo not to play prior to the 1st week General.

Theatre—Congress. Playing Position—"B".

If the Marbro or Paradise Theatre plays in the 4th week after the last day of exhibition in the loop, this theatre not to play until 14 days after the last day of exhibition in these theatres. If the above mentioned theatres play in the 5th week after the last day of exhibition in the loop, this theatre not to play until 14 days after last day of exhibition in these theatres. If the above mentioned theatres play in the 6th week after last day of exhibition in the loop, this theatre not to play until 7 days after last day of exhibition in these theatres. No theatre, (except Harding) in section bounded on west by Cicero, on east by Halsted

Street, on the south by Chicago Avenue, and on the north by Irving Park Boulevard, to play earlier than 9th week after last day of exhibition in the loop. Oak Theatre, and Rio Theatre to play in 2nd week of Chicago General. Rose and Logan Theatres not to play earlier than 1st week of General.

Theatre—Century. Playing Position—"B".

Panorama, Julian, Vic, Parkside, Lanecourt Biograph and Mode not to play until 1st week general. Buckingham, Vogue and Covent not to play earlier than "C" week. Claremont, Lakeside and Parkway not to play before 2nd week Chicago general.

Theatre—Oriental. Playing Position—"B" (Loop).

This theatre may move into 1st run loop playing position on mutual agreement. Woods, Clark, Loop End and LaSalle theatres not to play earlier than the 1st week.

Theatre—Harding. Playing Position—"A".

This theatre to play immediately after Uptown and Marbro.

Theatre—Varsity. Playing Position—"B".

If the Riviera, Uptown or Granada play in 4th week after the last day of exhibition in the loop, this theatre not to play earlier than 14 days after the last day of exhibition in these theatres. If the above mentioned theatres play in the 5th week after the last day of exhibition in the loop, this theatre not to play earlier than 14 days after the last day of exhibition in these theatres. If the above mentioned theatres play in the 6th week after the last day of exhibition in the loop, this theatre not to play earlier than 7 days after the last day of exhibition in these theatres. No theatres in the north or northwest sections of Chicago, (except Harding, Riviera, Uptown and Granada Theatres) or in the northern part of Cook County, outside the city limits of Chicago, or in Lake County, Ill. (except Waukegan) to play prior to or during these weeks, except Sheridan, Century, Northshore, Pantheon, Congress and Nortown, which theatres may play in the same week. Wilmette Theatre, Wilmette, Ill. not

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to play earlier than 1st week of General release. Valencia, Evanston, Ill. not to play earlier than 2nd week general. Main Theatre, Evanston, Ill. not to play earlier than 2nd week general. Teatro Del Lago, Wilmette, Ill. may play pre-release "C" week if admission price is increased to 30¢ evening and 20¢ adult matinee. If Varsity Theatre plays pre-release "C" week, Teatro Del Lago not to play earlier than 1st week general.

Theatre—Belpark. Playing Position—"C".

Commodore, Rivoli, Patio, Milford, Portage, Embassy, Irving and New Drake not to play before 1st week general release.

Theatre—Berwyn. Playing Position—"C".

Annetta, Palace, Ritz, Roxy, Villas and Hawthorne not to play before 1st week general release. Clifford, Morton Park, Villages of Lyons and Brookfield, not to play before 2nd week general release.

Theatre—Biltmore. Playing Position—"C".

Crystal not to play earlier than same week. Oakley, Chop Hub and Royal not to play earlier than 1st week general release. Wicker Park, Banner and Strand not to play earlier than 2nd week, general release. Crown may play "C" week.

Theatre—Belmont. Playing Position—"C".

Clearance: Pre-release "C"—Covent Garden, North Center, Buckingham may play in same week. Rosewood, Davis, Bugg, Julian, Bertha, Biograph not to play earlier than 1st week general. Strand, Lincoln, Garden, Hollywood not to play earlier than 2nd week general.

Theatre—Central Pk. Playing Position—"C".

Marshall Sq., Broadway Strand, Atlantic, not to play earlier than same week. White Palace, Circle, Lindy not to play earlier than 1st week general. Gold not to play earlier than 2nd week general. Twentieth Century, Independence, Lawndale not to play earlier than 3rd week general. Harrison not earlier than 2nd week general.

Theatre—Gateway. Playing Position—"C".

Terminal not to play earlier than same week. Village of Park Ridge and Portage not to play earlier than 1st week general. Admiral and Casimir not to play earlier than 2nd week general. New Theatre being built on Milwaukee Avenue directly opposite this theatre to play in 2nd week if Gateway plays "B" and 3rd week if Gateway plays "C".

Theatre—Manor. Playing Position—"C".

Belpark, Tiffin, Alamo, State and Montclare not to play earlier than same week. Iris and Symphony not to play earlier than 1st week general. New Home and Ambassador not to play earlier than 2nd week general.

Theatre—Maryland. Playing Position—"B" or "C".

Drexel, Langley and Midway not to play earlier than 2nd week general. Jeffery and Grove to play in same week with Maryland. Lexington, Kimbark, Jackson Park, Frolic, Plaisance and Amo not to play earlier than 1st week general.

Theatre—Norshore. Playing Position—"C".

Valencia, Evanston, Ill. to play 2nd week general release. Main, Evanston, Ill. to play in 2nd week general release. Howard to play 1st week general release. If Howard raises admission price to 30¢ evening and 20¢ adult matinee, may play pre-release "C" if Norshore plays "B" week.

3056 Theatre—Pantheon. Playing Position—"B" or "C".

Bryn Mawr, Mode, Lakeside and De Luxe not to play before 1st week general release. Argmore not to play before 2nd week general.

Theatre—Regal. Playing Position—"B" or "C".

Michigan not to play earlier than 1st week general. Indiana not to play earlier than 2nd week general. Metropolitan not to play earlier than 2nd week general. Apollo, Harmony and Willard not to play earlier than 3rd week general.

Theatre—Senate. Playing Position—"B".

Kedzie, Kedzie Annex and Harrison not to play earlier than 2nd week general. Garfield not to play earlier than 3rd week general. If the Marbro or Paradise Theatres play in the 4th week after the last day of exhibition in the loop, this theatre not to play until 14 days after the last day of exhibition in these theatres. If the above mentioned theatres play in the 5th week after the last day of exhibition in the loop, this theatre not to play until 14 days after the last day of exhibition in these theatres. If the above mentioned theatres play in the 6th week after the last day of exhibition in the loop, this theatre not to play until 7 days after last day of exhibition in those theatres.

Theatre—State. Playing Position—"C".

This theatre to play in "C" pre-release (9th week after last day of exhibition in loop week). Forest Park may play in same week but after this theatre. In the event the State Theatre plays a picture on Friday-Saturday, the Forest Park to play this picture in 1st week of General release. Lido, Maywood, Ill., and LeMar not to play earlier than same week. Ritz, Iris, Village of Maywood, (except Forest Park Theatre) Village of Oak Park (except LeMar Theatre), Ambassador, Park, West End, Symphony, Byrd, Crawford and Lake not to play earlier than 1st week of general release. Plaisance, Austin and Savoy not to play earlier than 2nd week of general release.

Theatre—Terminal. Playing Position—"C".

Gateway may play in same week. Rivoli, Admiral, New Drake, Bertha and Commodore to play 1st week. New Albany, Monticello, Home, New Mable and Metro to play 2nd week. Alba to play 1st or 2nd week general.

Theatre—Tower. Playing Positions—"A"—"B" or "C".

Jeffery and Maryland not to play before pre-release "C" week. Jackson Park, Hamilton and Lexington not to play before 1st week general. Drexel, Kimbark, (63rd & Kimbark), Langley and Midway not to play before 2nd week general.

Theatre—LaGrange. Playing Position—"C".

Tivoli, Downers Grove, Ill. not to play earlier than same week. Hinsdale, Ill. and Roxy, Berywyn, Ill. not to play earlier than 1st week general. Brookfield, Ill. and Lyons, Ill. not to play earlier than 2nd week general. Argo, Ill. not to play earlier than 1st week general.

Theatre—Covent. Playing Position—1st Week or Pre-release "C".

Clearance: pre-release "C" week. Vogue and Buckingham to play in same week. Panorama, Julian, Parkside, Vic, Lake Court and Biograph not to play earlier than 1st week general release. Parkway, Lakeshore and Claremont not to play earlier than 2nd week general.

Theatre—Crystal. Playing Position—"C".

Logan, Grand, Rogers, not to play earlier than 1st week general. California, Oak, Vision and Harmony not to play earlier than 2nd week general. Queen not to play earlier than 3rd week general.

Theatre—Lakeside. Playing Position—1st Week.

De Luxe, Bryn Mawr and Mode not to play earlier than 1st week general. Argmore, Temple, not to play earlier than 2nd week general.

3057 Loew's Incorporated

(Distributors of M-G-M Talking Trailers)

Branch Letter	Territory Record Card	Exhibitors Contract Registet	Contract Number	Amount per trailer

Agreement, between Loew's Incorporated, (Distributors of Metro-Goldwyn-Mayer Talking Trailers) hereinafter called "Distributor", and the Exhibitor hereinafter named and referred to as the "Exhibitor", operating the theatre hereafter designated.

Witnesseth: The parties hereto agree as follows:

1. Distributor hereby grants to the Exhibitor, and Exhibitor hereby accepts, a license under copyright, subject to the terms and conditions hereinafter stated, to exhibit in synchronism with recorded sound, at said theatre only, M-G-M Talking Trailers (by which term is meant positive prints, each not exceeding one reel in length, and the sound record accompanying same prepared and used for the purpose of advertising and announcing coming motion pictures) of the feature motion pictures generally released by Distributor during the period commencing September 1st, 1936, and ending August 31st, 1937. Said M-G-M Talking Trailers are hereinafter referred to as "trailers." Wherever the term "the Exchange" is used herein same means the Distributor's Exchange out of which Exhibitor is served.

2. Exhibitor agrees to pay Distributor for such license as to each trailer the sum of dollars ($), and to make such payment at least three (3) days in advance of the date of shipment from the Exchange or from the last previous exhibitor of the print of the respective trailer. Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print (and/or sound records) of any trailer contracted for hereunder, payment of all amounts then due Distributor by Exhibitor as the contract price of any of the trailers (and/or sound records) theretofore delivered to Exhibitor under this or any other contract(s) between the parties hereto and Distributor may require such payment of all sums then due by means of a C.O.D. shipment or otherwise.

3. Distributor agrees to deliver to Exhibitor a positive print with recorded sound of each trailer days prior to the first date of exhibition at said theatre of the feature motion picture to which the respective trailer relates. Delivery of such positive print by Distributor to Exhibitor at the Exchange or to a common carrier or to the United States Postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by Distributor to Exhibitor hereunder.

4. It is expressly agreed that Exhibitor is not obligated to use or pay for (nor Distributor to deliver) any trailers for any feature motion pictures which are not covered by duly authorized exhibition contracts therefor between

Exhibitor and Distributor, nor is Exhibitor obligated
use or pay for (nor Distributor to deliver) any traile
for any feature motion pictures excluded from such co
tracts in accordance with the terms and provisions there

5. It is further agreed that this contract shall be deem
automatically extended upon the same terms and con
tions as herein stated to cover trailers for all feature m
tion pictures generally released by Distributor during t
year beginning September 1, 1937, unless either party sen
notice in writing by registered mail to the other not lat
than July 1st, 1937, terminating this agreement effecti
with the trailer of the last motion picture generally r
leased in the period ending August 31, 1937; and that
shall be deemed further automatically extended upon t
same terms and conditions as herein stated from year
year thereafter until terminated by either party by noti
in writing sent to the other by registered mail on or bef
July 1st preceding the expiration of the then current perio

6. (a) "Recorded sound", as used in this agreemer
is deemed to mean the spoken words, music or other soun
recorded upon a positive print of a trailer or upon a recor
disc or other similar devices separate and apart from
positive print, for use in synchronism therewith. Distri
utor does not warrant that such recorded sound will
recorded on the positive print or on records, discs or oth
similar devices, and reserves the right to use any one
more methods of recording it may from time to time dete
mine.

(b) The Exhibitor warrants and agrees first, that t
sound reproducing equipment installed in said theatre wi
operate reliably and efficiently to reproduce such recorde
sound with adequate volume and high quality, whethe
recorded upon the positive print or upon records, dis
or other similar devices; and second, that if copyrighte
musical compositions are included in such recorded soun
the Exhibitor shall at the time of the exhibition of suc
trailers and the reproduction of such recorded sound hav
an effective license from the copyright proprietor there
or from any licensee of such copyright proprietor to pe
form publicly the said copyrighted musical compositions.

7. Exhibitor agrees to return the print of each traile
with the reels and containers and all records, discs or oth
similar devices furnished therewith, in the same conditio
as when received, reasonable wear and tear due to prope

use thereof excepted, to the exchange or as otherwise directed by Distributor, not later than the first date of exhibition of the feature picture to which the respective trailer relates. Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers and records, discs, or other similar devices from the exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to the exchange; or if directed by Distributor, to ship same elsewhere than to the exchange transportation charges collect. It is agreed that the delivery of a positive print and/or any records, discs or other similar devices properly directed and packed in the container furnished by Distributor therefor, to a carrier designated or used by Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return thereof by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print and/or any records, discs or other similar devices to Distributor or fails to forward or delays forwarding (as directed by Distributor) any such print and/or any records, discs or other similar devices to any other exhibitor the exhibitor agrees to pay Distributor the damage, if any, so caused Distributor and in addition, the damage, if any, so caused such other exhibitor.

Distributor is hereby given the option of delivering any of the trailers directly to Exhibitor from the exchange or routed to Exhibitor through another exhibitor, and that in case of any delay in delivery or non-delivery of any prints and/or sound records so "routed" for any cause beyond the control of Distributor Exhibitor does hereby release and relieve Distributor of any and all claims for damages or otherwise therefor.

8. The Exhibitor shall pay to Distributor a sum equal to the cost of replacement at the exchange for each linear foot of any positive print and for all records, discs or other similar devices lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print, records, discs or other similar devices to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Exhibitor shall not be liable

for the damage or destruction of any positive print, rec
discs or other similar devices provided the Exhibitor es
lishes such damage or destruction occurred while in tra
from the Exhibitor. The Exhibitor shall immediately n
the exchange by telegram of the loss, theft or destruc
of or damage or injury to any positive print, records,
or other similar devices. If any positive print, rec
discs or other similar devices shall be received from
Exhibitor by Distributor or any subsequent exhibitor
damaged or partially destroyed condition it shall be dee
to have been so damaged or destroyed by the Exhi
unless the latter, immediately following the first p
exhibition thereof shall have telegraphed the exchange
such print and/or record, disc or other similar device
received by the Exhibitor in a damaged or partially
stroyed condition, and setting forth fully the natur
such damage and the amount of footage (or numbe
records) so damaged or destroyed.

9. This contract shall not be assigned by either p
without the written acceptance of the assignee and
written consent of the other party; provided, that if
tributor consents to an assignment by Exhibitor, such
sent shall not relieve the Exhibitor of liability hereu
unless Distributor consents in writing to release the
hibitor from such liability.

10. The Exhibitor agrees to run each trailer as deliv
without alteration, excepting with the written or telegra
approval of Distributor, subject to requirements of
authorized public authorities necessitating any change.

11. In the event of violation by Exhibitor of any of
terms and conditions hereof, or if Exhibitor becomes
solvent or is adjudicated a bankrupt or executes an ass
ment for the benefit of creditors, or if a receiver is
pointed for any of Exhibitor's property, or upon any
fault by Exhibitor under any other contract(s) for tra
between the parties hereto, Distributor may at its op
(1) terminate this contract and/or such other contrac
or (2) suspend the delivery of additional trailers hereu
and/or under any such other contract(s) until such def
or defaults shall cease and be remedied. It is agreed
the exercise of either of said remedies shall be in addi
to and without prejudice to any right or remedy of
tributor against Exhibitor at law or in equity and/or
vided for elsewhere in this agreement, by reason of
such breach.

It is agreed that in the event of the failure or refusal of Exhibitor to pay the license fee of any one or more of the trailers covered by this contract or any other contract(s) between the parties hereto, Distributor may at its option declare such failure or refusal a breach of this entire contract and/or such other contract(s) entitling Distributor to recover from Exhibitor as damages therefor the amount payable as license fees in respect of all trailers not theretofore exhibited and/or paid for pursuant to the provisions of this contract and/or such other contract(s).

12. If the Exhibitor shall be prevented from exhibiting or Distributor from delivering any of the said trailers for causes beyond their direct control then this license in respect to each such trailer shall terminate and revert to Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

13. The Exhibitor agrees to pay to Distributor upon demand any tax, (fee or other like change now and/or hereafter imposed or based upon the delivery and/or the exhibition of positive prints of the trailers and/or upon the sums payable under this contract by the Exhibitor to Distributor.

14. The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach, or default by such other party.

15. This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by Distributor. The deposit by Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder, or the delivery of a print or sound records of any of the trailers, shall not be deemed in acceptance hereof by Distributor.

16. This contract is complete and no promises or presentations have been made by either party to the other except as set forth herein.

In Witness Whereof ..... the Exhibitor, operating the ..... Theatre, located at No. ..... Street in (City and State) ..... has on (Date) ..... executed this application, which upon written acceptance by Distributor in the space

to the left provided below shall be deemed to be the license to the Exhibitor for the exhibition of said trailers at said theatre in accordance with the terms hereof.

Loew's Incorporated (Distributors of Metro-Goldwyn-Mayer Pictures)

By .....

(This signature is for identification only and is not an acceptance).

(Lessee)

Exhibitor ..... L.S.

(Owner)

(Strike out one)

An Individual—A Partnership—A Corporation (Strike out two)

By .....

Partner—General Manager—Officer (Strike out two)

Accepted, Approved and Countersigned at New York, N. Y.

Date .....

Loew's Incorporated (L.S.)

By .....

Vice-President or Sales Manager

White—Home Office; Pink—Exhibitor; Yellow—Branch; Green—Exhibitor's Application.

Printed in U.S.A.

3058 METRO-GOLDWYN-MAYER PICTURES

Distributed by
Loew's Incorporated

Exhibition Contract
1936-37 Feature Productions

Notice to Exhibitor: This is not a Standard form of Contract. It has been formulated individually by Distributor.

Agreement, made in one or more counterparts between Loew's Incorporated, a corporation (hereinafter referred to as "the Distributor"), party of the first part, and the exhibitor, hereinafter named and referred to as the "Exhibitor", operating the theatre or theatres hereinafter designated, party of the second part.

Witnesseth: The parties hereto agree as follow:

First: The Distributor hereby grants the Exhibitor, and the latter accepts, a license subject to the terms and conditions hereinafter stated, and those printed upon the reverse side hereof which are made a part of this contract to exhibit (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first motion picture deliverable hereunder, unless otherwise in the Schedule provided) In Synchronism With Recorded Sound each of the motion pictures designated in the Schedule at said theatre only for the number of successive days in the said Schedule provided. This license is under the respective copyrights of said motion pictures and under any copyright which may be in force with respect to any matter included in such recorded sound.

If more than one theatre is hereinafter designated no motion picture is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

Second: It is agreed that all payments to Distributor hereunder shall be made at the Exchange of Distributor out of which Exhibitor is served.

Time and Place of Exhibition

Third: The Exhibitor agrees to exhibit under said license said motion pictures with recorded sound, but only at the theatre herein specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided and not allow any positive print thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor, to exhibit or to permit the exhibition of any such positive print at any other time or place. Such license shall be specifically for such exhibition of such motion pictures, and for no other purpose.

Payment

Fourth: The Exhibitor agrees to pay for such license as to each of such pictures the fixed sum herein specified at least three (3) days in advance of the date of shipment from the Distributor's Exchange or from the last previous exhibitor of the positive print thereof.

Exhibitor hereby expressly grants Distributer the right to demand and receive, as a condition precedent to delivery of the print and or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor by Exhibitor under this or any other exhibition contract(s) between the parties hereto and or under any exhibition contract(s) entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation and Distributor may require such payment of all sums then due by means of a C. O. D. shipment or otherwise.

Warranties etc. as to Recorded Sound

Fifth: (a) "Recorded Sound", as used in this agreement, is deemed to mean the spoken words, music or other sounds recorded upon a positive print of a motion picture or upon a record, disc or other similar devices separate and apart from a positive print, for use in synchronism therewith. Distributor does not warrant that such recorded sound will be recorded on the positive print or on records, discs or other similar devices, and reserves the right to use any one or more methods of recording it may from time to time determine.

(b) The Exhibitor warrants and agrees first, that the sound reproducing equipment installed in said theatre will

operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs, or other similar devices; and second, that if copywrighted musical compositions are included in such recorded sound, the Exhibitor shall at the time of the exhibition of each of such motion pictures and the reproduction of such recorded sound, have an effective license from the copyright proprietor thereof or from any licensee of such copyright proprietor publicly to perform the said musical compositions.

(c) The Exhibitor agrees, first, to run all of said motion pictures on the same size reels as furnished by Distributor; second, to return to Distributor's Exchange all damaged or broken parts of all sound records, discs or other similar devices, if any have been delivered to Exhibitor hereunder, immediately following the last exhibition of the motion picture with which such sound records are used; and third, if such recorded sound is recorded on records, discs or other devices, to replace with black, blank, positive stock all parts removed from the positive print of any motion picture while in the Exhibitor's possession, but Exhibitor shall have no right to remove any part of the positive print except as specifically authorized elsewhere in this license.

Clearance and Run

Sixth: During the life of this contract the Distributor agrees not to exhibit or license the exhibition of any such motion picture in conflict with the "run" or prior to the expiration of the "clearance period", if any, in the Schedule specified, but it is agreed that any violation hereof by Distributor shall not affect this contract except as to the particular motion picture as to which such violation has occurred, and that the damage that may be claimed by Exhibitor shall not exceed the amount of the license fee herein provided for such particular motion picture, or, if such motion picture has been contracted for on the basis of a guarantee against a percentage, shall not exceed the amount of such guarantee, or if upon a straight percentage basis, shall not exceed the average amount paid by Exhibitor to Distributor for the motion pictures of Distributor theretofore exhibited by Exhibitor hereunder; and further agreed that such claim for damage shall be the sole and exclusive remedy of Exhibitor on account of such viola-

tion. Unless otherwise provided herein, such "clearance period" shall be computed from the last date of exhibition of each motion picture as fixed herein. If "clearance" is granted hereunder against a specified theatre or theatres which "clearance" shall indicate that it was the intention of the Distributor to grant such "clearance" against all of the theatres in the immediate neighborhood or vicinity of the Exhibitor's theatre, then, unless otherwise provided in the Schedule, such "clearance" shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

Seventh: The following Schedule and all of the written and printed parts thereof are a part of this license.

Schedule

There are licensed for exhibition hereunder all of the Distributor's motion pictures of feature length, not to exceed fifty-two (52) and not less than forty-four (44), including not more than one (1) motion picture foreign produced by a foreign producer, generally released by the Distributor or Metro-Goldwyn-Mayer Distributing Corporation for distribution as Distributor's or Metro-Goldwyn-Mayer Distributing Corporation's 1936-37 feature productions to motion picture theatres in the United States during the year commencing September 1, 1936, and ending August 31, 1937, except the motion pictures as to which Distributor is required by contract to obtain the consent or approval of the producer thereof, or other party, to the terms and conditions of licensing the exhibition thereof, unless Distributor obtains such consent or approval to the licensing thereof hereunder. The "road-showing," "try-out," "preview" and or "pre-release" or any motion picture during the said year shall not be deemed a general release of such motion picture.

It is expressly understood and agreed that neither The Great Ziegfeld, nor any feature productions licensed by Distributor or Metro-Goldwyn-Mayer Distributing Corporation as 1935-36 feature productions (even if generally released during the year commencing September 1, 1936), are included in this agreement.

It is agreed that Women Are Trouble and Kelly the Second, which were generally released prior to said September 1st, 1936, are included herein as 1936-37 productions.

For the license to exhibit said motion pictures at said theatre Exhibitor agrees to pay to Distributor the following:

Classifications.

License Fee or Minimum guarantee Against % of gross receipts per motion picture

Number of motion pictures	Consecutive days run	Rental or Minimum Guarantee	% of all gross receipts	Score Charge License Fee per motion Picture	To be exhibited on below specified days of Week

Total Number of Feature Motion Pictures Offered

Total Number of Feature Motion Pictures Licensed

It is agreed that the motion pictures which are to be exhibited by Exhibitor under each of the classifications above provided for shall be designated by the Distributor; and that any motion picture which Distributor does not designate to any of such classifications at least fourteen (14) days prior to the date agreed upon or assigned for the commencement of its exhibition shall be exhibited on the terms provided for in the last classification above.

It is further agreed that in case any motion picture excluded by Exhibitor under the "Option to Exclude" provision of this agreement shall be or shall have been designated by Distributor to any of the foregoing classifications, then such designation shall be deemed automatically rescinded and Distributor may designate a different motion picture in its place for exhibition upon the terms applicable to the motion picture so excluded.

It is further agreed that in the event any playdates confirmed to Exhibitor for any motion picture designated by Distributor to any of the foregoing classifications shall be on days of the week other than those herein provided for pictures of the respective classification, such, (illegible) other playdates on days of the week herein provided for pictures of the classification to which such picture is designated by the Distributor.

(A) It is further agreed that "gross receipts", as

such term is used in this agreement, means all sums (exclusive of admission taxes collected) received by Exhibitor for admission to said theatre on the date(s) of exhibits of the respective motion pictures.

(B) It is agreed that if the number of days of exhibition selected, designated or otherwise agreed upon, and confirmed in writing by Distributor for any motion picture licensed hereunder shall be less than the maximum number of days specified in the Schedule hereof with respect to such motion picture, then regardless of the number of days specified in said Schedule the license hereby granted to Exhibitor as to such motion picture shall be limited to the number of days of exhibition so selected and confirmed, unless Exhibitor prior to the last playdate so confirmed by Distributor shall secure Distributor's consent in writing to exhibit such motion picture an additional day or days up to the maximum number of days specified in said Schedule.

It is further understood and agreed that the license hereby granted shall not be deemed to include—

(a) any right of exhibition of any motion picture licensed hereunder at any time other than on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such picture; nor

(b) any right of exhibition of any motion picture licensed hereunder other than by means of the print of the picture furnished to Exhibitor by Distributor for the express purpose of exhibition on the date or dates of exhibition so selected designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such picture.

(C) Unless otherwise expressly provided in the Schedule hereof, the license hereby granted shall not be deemed to include the right to exhibit any of the motion pictures in whole or in part at any so-called midnight performance, viz. at any time between 12:01 A. M. and 6 A. M.

(D) In case Exhibitor is granted a second and or subsequent run hereunder Distributor may at its option require any of the motion pictures to be exhibited by Exhibitor as a prior run, and Exhibitor agrees so to exhibit same.

(E) It is understood and agreed that Distributor may furnish prints of any of the motion pictures contracted

for hereunder mounted on reels of 2000 feet maximum capacity.

(F) Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

Matinee Admission Prices, per person

Orchestra: Children		Adults
Balcony: Children		Adults

Evening Admission Prices (Commencing 6 P. M.), per person

Children	Adults
Children	Adults

I) It is agreed that a main consideration for the grant of this license is that Exhibitor warrants and agrees that during the entire engagement of each of the motion pictures hereby licensed not less than the respective prices above set forth shall be charged for admission to said theatre; and it is agreed that if without prior written consent of Distributor any of such respective admission prices are reduced during the engagement of any of the motion pictures Distributor shall have the right forthwith either to change or modify the run, availability and or clearance herein provided for, or to terminate this contract as to all motion pictures not theretofore exhibited hereunder, together with the right at Distributor's option to terminate any other exhibition contract(s) between the parties hereto.

II). It is further agreed that during the entire period of the engagement at said theatre of each of the motion pictures licensed hereunder none of the respective admission prices above set forth shall be reduced without the prior written consent of Distributor, and that if any of the motion pictures licensed hereunder are licensed upon a "participating basis" — that is, if the rental thereof is to be determined in whole or in part upon a percentage of the receipts of said theatre or any part thereof — that Exhibitor shall account to Distributor upon the basis of the respective admission prices set forth above for each person admitted to the theatre, except for a customary and reasonable number of free admissions to bona fide representatives of the press and or in consideration of theatre advertising, at each performance of each of said

motion pictures, (provided that if at any such performan any of the prices of admission are greater than the r spective amounts above set forth Exhibitor shall accou to Distributor on the basis of such larger amounts): a 'further agreed that if during the engagement of any the motion pictures licensed hereunder any of the r spective admission prices above set forth are reduc without prior written consent of Distributor, or up failure or refusal of Exhibitor to account to Distribut upon the basis herein provided with respect to any o or more of the motion pictures licensed hereunder on "participating basis" Distributor shall have the right terminate this contract as to all motion pictures not ther tofore exhibited hereunder together with the right at Di tributor's option to terminate any other exhibition co tract(s) between the parties hereto and/or any exhib tion contract(s) entered into between Exhibitor and Metr Goldwyn-Mayer Distributing Corporation and Distrib tor may at its option thereupon declare such violati hereof by Exhibitor a breach of this entire contract and any or all such other contracts entitling Distributor recover from Exhibitor as damages therefor the amou payable as license fees in respect of all motion pictur not theretofore exhibited and/or paid for pursuant to th provisions of this contract and/or such other contract(s It is understood and agreed that such rights shall be addition to any and all other rights and remedies grante Distributor in this agreement and without prejudice any and all other rights and remedies of Distributor law or equity.

(G) Separate Applications: It is expressly understoo and agreed that the approval or rejection of this applic tion by Distributor shall not be deemed an approval or re jection of any other application or applications signed b Exhibitor at the same time or at any other time.

Run ..... Clearance .....

Playing Arrangement(s)

Exhibitor by executing this application acknowledge that Distributor has two different forms of exhibitio contract for the product hereby licensed and has offere Exhibitor the choice, and that Exhibitor has of his (its own free will selected this form.

(End of Schedule).

Optional Arbitration Clause.

Optional Clause: Article Twenieth hereof is optional with the parties hereto. If it is desired to make such article a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Article shall be deemed excluded from this license agreement.

If is agreed by and between the parties that Article Twentieth, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

Representative of the Distributor duly authorized to agree to Article Twentieth.

Exhibitor L.S.
An Individual — A Partnership — A Corporation
(Strike out two)

By
Partner — General Manager — Officer
(Strike out two)

In Witness Whereof the Exhibitor, operating the Theatre, located at Street in the (*City & State*) has on (*Date*) executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Accepted, Approved and Countersigned at New York, N. Y.

Date

Loew's Incorporated (L.S.)

By
Vice-President or Sales Manager

White—Home Office; Pink—Exhibitor; Yellow—Branch; Green—Exhibitor's Application. Printed in U. S. A.

Loew's Incorporated (Distributor of Metro-Goldw
Mayer Pictures).

By .....

(This signature is for identification only and is no
acceptance).

Lessee)/
Owner) (Strike out one)

Exhibitor .....

An Individual — A Partnership — A Corporation
(Strike out two)

By .....

Partner — General Manager — Officer
(Strike out two)

Branch	Territory	Letter	Exhibitor's Record
Contract Register		Contract Number	Amou

3059 Form 852B

Exhibition Contract (continued)

Delivery and Return of Prints and Records

Eighth: The Distributor agrees to deliver to the
hibitor during the period specified in Article First he
or otherwise in the Schedule provided for a positive p
with recorded sound suitable for exhibition of each
such motion pictures for exhibition at the said theatre
the date specified or on the dates determined as he
provided. Delivery of such positive prints by the
tributor to the Exhibitor or to the Exhibitor's author
agent at the Distributor's exchange or to a common car
or to the United States postal authorities for mailing
be deemed delivery by the Distributor to the Exhib
hereunder.

All deliveries other than at the Distributor's excha
shall be made in time to enable the carrier thereof in
cordance with the carrier's time schedule to deliver to
Exhibitor or at the place where the Exhibitor's theatr
located prints at least one hour before the usual time
the opening of the Exhibitor's Theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder with the reels and containers and all records, discs or other similar devices furnished therewith, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers and records, discs, or other similar devices from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints, (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints and records, discs, or other similar devices elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print and/or any records, discs or other similar devices properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print and/or any records, discs, or other similar devices by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print and/or any records, discs or other similar devices to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print and/or any records, discs or other similar devices to any other exhibitor the exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

It is understood and agreed that Distributor is hereby given the option of delivering prints and/or sound records of any of the motion pictures directly to Exhibitor from Distributor's exchange or routed to Exhibitor through another exhibitor, and that in case of any delay in delivery or non-delivery of any prints and/or sound records so "routed" for any cause beyond the control of Distributor Exhibitor does hereby release and relieve Distributor of any and all claims for damages or otherwise therefor.

Selection of Playdates

Ninth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor or Metro-Goldwyn-Mayer Distributing Corporation to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Loss of and Damage to Prints and Records

Tenth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print and for all records, discs, or other similar devices lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment however, shall not transfer title to or any interest in any such positive print, records, discs or other similar devices to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall at the option of the Exhibitor

repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within thirty (30) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive print, records, discs or other similar devices provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print, records, discs or other similar devices. If any positive print, records, discs or other similar devices shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print and or record, disc or other similar device was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage (or number of records) so damaged or destroyed.

Reissues

Eleventh: The Distributor warrants that none of the motion pictures licensed hereunder are reissues from old negatives or old negatives renamed, except those specifically set forth as such in the Schedule.

Assignment

Twelfth: This contract shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if Distributor consents to an assignment by Exhibitor, such consent shall not relieve the Exhibitor of liability hereunder unless the Distributor consents in writing to release the Exhibitor from such liability.

Exhibition and Advertising

Thirteenth: The Exhibitor agrees to run motion pictures (excepting "news reels"), as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each motion picture as a "Metro-Goldwyn-Mayer picture."

In all newspaper advertising and publicity issued by the Exhibitor relating to said motion pictures the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of said motion pictures must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Exhibitor agrees not to advertise any of the motion pictures herein provided for by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise, prior to nor until after the completion of the exhibition thereof by any other exhibitor having the right to a run thereof prior to the run herein granted to Exhibitor in the same city, town or zone; and it is agreed that upon any violation hereof by Exhibitor Distributor shall have the right (in addition to any and all other rights and remedies) to withhold delivery to Exhibitor of any motion picture as to which such violation occurs.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other exhibition contract with any other exhibitor.

Warranty As To Advertising.

Fourteenth: The Distributor warrants that the motion pictures herein provided for will not contain any advertising matter for which compensation is received by the Distributor.

Taxes

Fifteenth: The Exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of positive prints of the motion pic-

tures and/or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Default

Sixteenth: In the event of default by Exhibitor in exhibiting or paying for any motion picture in accordance with the provisions hereof, or in furnishing any box-office statement or in giving Distributor's representative access to the theatre and/or to Exhibitor's books and records in connection with percentage engagements as herein provided, or if Exhibitor shall exhibit or permit the exhibition of any of the motion pictures at any time or place other than as herein specified; or if Exhibitor becomes insolvent or is adjudicated a bankrupt or executes an assignment for the benefit of creditors, or if a receiver is appointed for any of Exhibitor's property, or upon any default by Exhibitor under any other exhibition contract(s) between the parties hereto, or under any exhibition contract(s) entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation or upon failure or refusal of Exhibitor to furnish any box office statement or give Distributor's representative access to the theatre and/or to Exhibitor's books and records in connection with percentage engagements as provided in any such other exhibition contract, then upon the happening of any one or more of said events, Distributor may at its option (1) terminate this contract and/or such other contract(s) or (2) suspend the delivery of additional motion pictures hereunder and/or under any such other contract(s) until such default or defaults shall cease and be remedied, or (3) demand for its protection and as security for the complete performance by Exhibitor of this and all such other contracts between the parties hereto, payment by Exhibitor of a sum not exceeding five hundred dollars ($500.00) under this and each such other contract, to be retained by Distributor

until the complete performance of all such contracts, and in case Exhibitor shall fail or refuse to pay the amount so demanded within seven (7) days after demand Distributor may suspend service under this contract and any or all such other contracts until such sum shall be paid as to each contract, and or terminate this contract and or any or all such other contracts. It is understood and agreed that the exercise of any of said remedies shall be in addition to and against Exhibitor at law or in equity and or provided for without prejudice to any right or remedy of Distributor elsewhere in this agreement, by reason of any such breach.

It is agreed that in the event of the failure or refusal of Exhibitor to pay the license fee of any one or more of the motion pictures covered by this contract or any other exhibition contract(s) between the parties hereto, Distributor may at its option declare such failure or refusal a breach of this entire contract and or such other contract(s) entitling Distributor to recover from Exhibitor as damages therefor the amount payable as license fees in respect of all motion pictures not theretofore exhibited and or paid for pursuant to the provisions of this contract and or such other contract(s).

Prevention Of Performance

Seventeenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Waiver

Eighteenth: The waiver by either party of any breach or defualt by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Verbal Promises: Representations

Nineteenth: This Contract Is Complete And No Promises Or Representations Have Been Made By Either Party To The Other Except As Set Forth Herein.

Arbitration

Twentieth: It is understood and agreed that all claims and controversies arising hereunder shall be determined by arbitration as follows (hereby expressly waiving the oath of the arbitrators):

Either the Exhibitor or Distributor shall appoint an arbitrator and give written notice of such appointment to the other party. Within five (5) days after the receipt of such notice of appointment, the other party shall appoint a second arbitrator and give written notice of such appointment to the other arbitrator and to the other party. The two arbitrators so selected shall within three (3) business days thereafter select a third arbitrator, and the three (3) arbitrators shall thereupon meet and determine the matter. The hearing of any such controversy shall be in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place.

The arbitrators appointed hereunder shall proceed forthwith to hear and determine the matter or matters referred to them for determination and the evidence submitted to them, and may require the parties to appear and produce such accounts, documents and witnesses as the arbitrators may require.

The arbitrators shall have power to determine such dispute or controversy, to make findings of fact in respect thereof, and to direct specific performance of a contract, and/or to determine that the same has been breached in whole or in part, and or that damages on such account shall be paid.

The decision or Award of a majority of the three (3) arbitrators herein provided for shall be final and binding and conclusive upon the parties hereto.

If either party fails or refuses to name the arbitrator to be appointed by such party as herein provided, or if any arbitrator so named shall fail or refuse to act, or be unable or unqualified to serve and another arbitrator qualified and then available to act is not then appointed, another arbitrator may be appointed by the other party hereto.

If the arbitrators appointed by or for the respective parties shall fail to agree upon such third arbitrator, such third arbitrator may be appointed by the then Acting President of the Chamber of Commerce of the State of

New York, or if there be none, then by the Chief Judge of the Court of Appeals of the State of New York.

The parties hereto further agree to abide by and forthwith comply with any decision and or award of the arbitrators or a majority of them, and consent that any such decision and or award shall be enforcible in or by any court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a State in which such hearing would otherwise not be had, for an order to proceed to arbitrate, in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and or in each existing exhibition contract entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation and or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of the arbitrators in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party of this or any other existing license agreement between the parties.

Each of the parties hereto, without notice to the other,

may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

First Run Exhibitions

Twenty-first: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Article within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Article Ninth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Article provided.

Second Run Exhibitions

(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures excepting those described in Paragraph (d) of this Article within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Article, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any

provision of Article Ninth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (c) of this Article provided.

Subsequent Runs Exhibitions

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Article, within the said period of fourteen (14) days specified in Paragraph (b) of this Article the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen (14) day period and ending seven (7) days thereafter, notwithstanding any provision of Article Ninth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (c) of this Article provided.

Extended Runs

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Article and of Article Twenty-fourth.

Exhibition After Revocation Of Run And Clearance

(e): Upon the waiver of the grant of the run and or the clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Article, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Article for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and or clearance period granted or hereafter granted to other exhibitors, upon written request *mailed* or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Article. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

Percentage Bookings

Twenty-second: If this contract calls for payment or any part thereof computed upon the Exhibitor's receipts, such payment or any part thereof shall be made daily, together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of each motion picture for which payment is so required to be made; and Exhibitor shall also furnish immediately after the conclusion of the engagement of each such motion picture a recapitulating statement and together therewith pay to Distributor any amount due in connection with such engagement. All such statements shall show the number of admissions at the respective admission prices charged at such performance, and the number of free admissions, and shall be signed by Exhibitor's cashier and countersigned by Exhibitor or the manager of the theatre. Should Distributor so require, such itemized statements shall be made upon forms furnished by Distributor. Upon such date or dates Distributor is hereby given the right to verify by its authorized representatives the sale of all tickets of admission to said theatre, and all other receipts during the engagement; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all the Exhibitor's books and records. The Distributor is also hereby

given the right to audit all of Exhibitor's books and records at any time after the conclusion of the engagement of any such motion picture, and for such purpose Distributor by its authorized representatives shall be given access to the theatre, including the box-office, and/or other place or places where such books and records are kept.

It is expressly understood and agreed that Exhibitor's books and records shall show, among other items, the number of admissions and gross receipts at each separate performance during the engagement of any such motion picture, matinee, evening and any other performances; and further agreed that if Exhibitor's operating expense is an element in the computation of the amount payable to Distributor hereunder the right herein granted Distributor to audit Exhibitor's books and records shall include the right to examine all of such books and records relating to Exhibitor's operating expenses.. It is further agreed that in computing Exhibitor's opreating expenses any and all income (such as amounts payable to Exhibitor from renting and/or sub-renting space in the building where the Exhibtor's theatre is located and/or for screen advertising of any kind on the screen in the theatre; etc.) during the period of the engagement of any motion picture on a participating basis shall be deducted from Exhibitor's operating expenses.

Exhibitor agrees to account to Distributor on the basis of the admission prices set forth in the Schedule hereof, for each person entering the theatre, except for a customary and reasonable number of free admissions to bona fide representatives of the press and/or in consideration of theatre advertising.

It is further agreed that all sums of money accruing to Distributor hereunder as its share of any engagement of a motion picture on a participating basis shall be held by Exhibitor in trust for Distributor.

The Distributor agrees that any information obtained by it pursuant to the provisions of this Article will be treated as confidential, except in any arbitration proceeding or litigation in respect of this contract.

Liquidated Damages, Percentage Bookings

If the license fee of any motion picture licensed hereunder is to be computed either in whole or in part upon a percentage of the admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit such motion picture as provided in this contract, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit such motion picture (in addition to any fixed sums payable hereunder in respect of such motion picture) a sum equal to such percentage of the average daily gross receipts of such theatre during the exhibition thereat of all feature motion pictures distributed by Distributor exhibited by Exhibitor on a "participating basis" during the period of ninety (90) days prior to the date or dates when such motion picture should have been so exhibited or prior to the date of such failure or refusal to exhibit any of said motion pictures; or, in the event no feature motion picture distributed by Distributor was exhibited thereat on a "participating basis" during said period, then Exhibitor shall pay as liquidated damages for each day Exhibitor fails or refuses to exhibit such motion picture (in addition to any fixed sums payable hereunder in respect of such motion picture) a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such motion picture should have been so exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided, however, that if the Exhibitor shall exhibit such motion picture for less than the full number of days provided for in this contract, such sum equal to such percentage shall be computed upon a sum equal to seventy-five per cent (75%) of the gross receipts of said theatre for the last day of the exhibition thereat of such motion picture.

Option To Exclude If Group Licensed

Twenty-Third: (a) If in this license agreement the total number of feature motion pictures offered to Exhibitor by Distributor at once time shall have been licensed by Distributor hereunder, and the license fees of all thereof average not more than two hundred and fifty dollars ($250.00), the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten percent

(10%) of the total number of feature motion picture licensed hereunder; provided the Exhibitor

(1) is not in default under this license agreement; an

(2) shall have fully complied with all of the provision if any, set forth in this agreement for the exhibition such feature motion pictures at specified intervals.

(b) Such privilege of exclusion may be exercised onl upon the following terms and conditions:

(1) The Exhibitor shall give to the Distributor writte notice of Exhibitor's election to exclude any of said fe ture motion pictures within fourteen (14) days after th general release date thereof in the exchange territory ou of which the Exhibitor is served.

(2) The Exhibitor may exclude without payment there for one (1) motion picture out of each group of ten (10 of the number of feature motion pictures specified in thi license agreement provided Exhibitor has paid for th other nine (9) of such group.

(3) If such privilege of exclusion is not exercised a provided in paragraph (b) (2) above, the Exhibitor ma nevertheless exercise such privilege by paying the licens fee of each motion picture excluded with the notice of it exclusion. In such case, such payment shall be credite against such tenth or succeeding tenth motion picture, a the case may be, which the Exhibitor would otherwise h privileged to exclude as provided in paragraph (b) (2 above.

If the only or last group licensed is less than ten (10 and more than five (5) motion pictures, the privilege to ex clude shall apply provided the Exhibitor has paid for a motion pictures but one in such group.

(c) Upon the failure or refusal of the Exhibitor to com ply with any term or condition of this license agreemen or to comply with any arbitration award in respect there to, the privilege of exclusive forthwith shall be revoke and the Exhibitor shall be liable for and pay to the Di tributor the license fees of all motion pictures theretofo excluded.

(d) If the license fee of any feature motion picture spe cified in this license agreement is to be computed in whol or in part upon a percentage of the receipt of the Exhib tor's theatre, such license fee (for the purpose of comput ing the average license fee of all of the motion picture licensed) shall be determined as follows:

(1) Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the exhibitor' theatre during the period of one year prior to the term of this license agreement.

(2) If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theatre during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

(e) If the rental of any motion picture excluded is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (b) (3) hereof shall be determined as follows:

(1) Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) days period preceding the Exhibitor's notice of exclusion, and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(2) If no feature motion pictures of the Distributor were exhibited at the Exhibitor's theatre during said ninety (90) day period, average the daily gross receipts of the Exhibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (1/2) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

General Release

Twenty-Fourth: It is understood and agreed that the public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited, in the territory wherein is located the exchange from which the Exhibitor is served, excepting any "road show", "tryout", "preview", or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release"

exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibition in advance of general release as herein defined.

Road Shows

Twenty-fifth: The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow", at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than three of such motion pictures shall be so roadshown.

If and when any such roadshow exhibition (except any roadshow exhibition in New York and/or Los Angeles) shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, such motion picture so roadshown in such territory shall forthwith be excepted and excluded from this license. The Distributor shall send written notice to that effect, to the Exhibitor within fourteen (14) days after such roadshow exhibtion commences.

If any such roadshow exhibition shall be in the city of New York, N. Y., and if the Exhibitor's theatre be situated in a territory then served by the Distributor's exchange or exchanges located in said City, the Distributor shall have the right to except and exclude from this license any such motion picture (not exceeding in the aggregate three of such motion pictures) so roadshown in said City upon sending written notice to that effect to the Exhibitor not later than eight weeks after the commencement of such roadshow exhibition in such City, provided the Distributor shall by like notice except and exclude such motion picture from all other contracts containing this clause and licensing the exhibition of such motion picture in such territory. Such exception and exclusion shall not be affected in case the Distributor shall inadvertently omit to send such notice to any of such other exhibitors.

If any such roadshow exhibition shall be in the city of Los Angeles, Cal., and if the Exhibitor's theatre be situ-

ated in the territory then served by the Distributor's exchange or exchanges located in said City, the Distributor shall have the right to except and exclude from this license any such motion picture (not exceeding in the aggregate three of such motion pictures) so roadshown in said City, upon the same terms and conditions above provided for the exception and exclusion of motion pictures roadshown in the city of New York.

The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder, as and when available; and Exhibitor agrees not to advertise or make public announcements in any manner that any such motion picture is to be exhibited at the theatre in this agreement specified until Distributor shall have notified Exhibitor that such motion picture is available for exhibition by Exhibitor, and all such advertising and public announcements shall be governed by the provisions of Article Thirteenth of this agreement.

For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to that effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by it, free from all claims of the Exhibitor in respect thereof.

Acceptance of Application

Twenty-sixth: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the Distributor and notice of acceptance sent to the Ex-

hibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print or sound records of any of the motion pictures or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof if said theatre of the Exhibitor is located east of the Mississippi River, and within thirty (30) days after the date thereof if located west of said River, said application shall be deemed withdrawn and Distributor shall forthwith return any sums paid on account thereof by the Exhibitor.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor shall be forwarded to the Exhibitor.

(over)

3060 Hearst Metrotone News

"The Globe Trotter"

Metro-Goldwyn-Mayer Distributing Corporation

Notice to Exhibitor: This is not a standard form of contract. It has been formulated individually by Distributor.

Exhibition Contract

Agreement, made in one or more counterparts between Metro-Goldwyn-Mayer Distributing Corporation, a corporation (hereinafter referred to as the "Distributor"), party of the first part, and the exhibitor hereinafter named and referred to as the "Exhibitor", operating the theatre or theatres hereinafter designated, party of the second part.

Witnesseth: The parties hereto agree as follows:

First: The Distributor hereby grants the Exhibitor, and the latter accepts, a license subject to the terms and conditions hereinafter stated, and those printed upon the reverse side hereof which are made a part of this contract

to exhibit In Synchronism With Recorded Sound each of the Hearst Metrotone News provided for in the Schedule at said theatre only for the number of successive days in the said Schedule provided. This license is under the respective copyrights of said Hearst Metrotone News and under any copyright which may be in force with respect to any matter included in such recorded sound.

If more than one theatre is hereinafter designated no Hearst Metrotone News is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

Time and Place of Exhibition

Second: The Exhibitor agrees to exhibit under said license said newsreels with recorded sound, but only at the theatre herein specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not allow any positive print thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition of any such positive print at any other time or place. Such license shall be specifically for such exhibition of such newsreels, and for no other purpose.

Unless Otherwise Expressly Provided In The Schedule Hereof, The License Hereby Granted Shall Not Be Deemed To Include The Right To Exhibit Any Of The Newsreels In Whole Or In Part At Any So-Called Midnight Performance (Viz., At Any Time Between 12:01 A.M. and 6 A.M.)

Payment

Third: The Exhibitor agrees to pay for such license as to each of such newsreels the fixed sums herein specified at least (3) days in advance of the date of shipment from the Distributor's Exchange or from the last previous exhibitor of the positive print thereof.

It is agreed that all payments to Distributor hereunder shall be made at the Exchange of Distributor out of which Exhibitor is served.

Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print and/or sound records of any newsreels contracted for hereunder, payment of all amounts then due

the Distributor by Exhibitor as the contract price of any of the newsreels, motion pictures, and/or sound records theretofore delivered to Exhibitor under this or any other exhibition contract(s) between the parties hereto and Distributor may require such payment of all sums then due by means of a C. O. D. shipment or otherwise.

Schedule A

Column 1	Column 2						
Hearst Metrotone News	To Be Shown As Follows						
	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.

Column 3		Column 4	
Starting		Terms	
Day	Date	No. Days	Price Per Run

Column 5	Column 6	Column 7		Column 8
Total Number Releases Contracted For Original Term	Total Amount of Contract for Original Term	One Sheet Posters		Slides
		Stock	Regular	

(A) Exhibitor agrees to start playing of Hearst Metrotone News not later than the starting date specified in Column 3 above and to play (on the days of the week designated in Column 2 above) and/or pay for ~~each~~ week in sequence, the number of said News designated in Column 1 above.

It is further agreed that this contract covers the number of releases of News specified in Column 5 above and that the "original term" of this contract shall be deemed to be the period required for the playing in sequence of all such releases; and that this contract also covers the same number of releases of News released by Distributor in the like period immediately following the "original term" unless and until the newsreels to be released by Distributor in such further period are eliminated herefrom (and the contract thereby cancelled as to same) by either party by notice in writing to the other sent by registered mail at least thirty (30) days prior to the expiration of the "original term", and that it also covers all releases of News released by Distributor in each succeeding like period unless and until the newsreels to be released in such succeeding periods are eliminated herefrom (and the contract thereby cancelled as to same) by either party by notice in writing to the other sent by registered mail at least thirty (30) days prior to the expiration of any such succeeding period.

(B) It Is Understood And Agreed That No Exclusive Run, Nor Any Clearance, is Granted To Exhibitor, With Respect To Any Of The Hearst Metrotone News.

(C) It is agreed that if the number of days of exhibition selected by Exhibitor and confirmed in writing by Distributor for any newsreel licensed hereunder shall be less than the maximum number of days specified in the Schedule hereof with respect to such newsreel, then regardless of the number of days specified in said Schedule the license hereby granted to Exhibitor as to such newsreel shall be limited to the number of days of exhibition so selected and confirmed, unless Exhibitor prior to the last playdate so confirmed by Distributor shall secure Distributor's consent in writing to exhibit such newsreel an additional day or days up to the maximum number of days specified in said Schedule.

It is further understood and agreed that the license hereby granted shall not be deemed to include—

(a) any right of exhibition of any newsreel licensed hereunder at any time other than on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such newsreel; nor

(b) any right of exhibition of any newsreel licensed

hereunder other than by means of the print thereof fur nished to Exhibitor by Distributor for the express pur pose of exhibition on the date or dates of exhibition s selected, designated or otherwise agreed upon, as herei provided, and confirmed in writing by Distributor to Ex hibitor for such newsreel.

(D) It is understood and agreed that if the print o any of the Newsreels contracted for hereunder is mor than 1000 linear feet in length Distributor may furnis such print to Exhibitor mounted on a reel or reels of 200 feet maximum capacity.

Exhibitor by executing this application acknowledge that Distributor has two different forms of exhibition con tract for Hearst Metrotone News and has offered Exhi itor the choice, and that Exhibitor has of his (its) own free will selected this form.

(End of Schedule)

Optional Arbitration Clause

Optional Clause: Article Seventeenth hereof is optiona with the parties hereto. If it is desired to make such article a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately fol lowing this paragraph and unless so signed the said Articl shall be deemed excluded from the license agreement.

It is agreed by and between the parties that Articl Seventeenth, providing for voluntary arbitration of dis putes arising hereunder, shall be included as a part of thi license.

Representative of the Distributor duly aut orized to agree to Article Seventeenth.

Exhibitor ..... L.S.

An Individual—A Partnership—A Corporation
(Strike out two)

By .....

Partner—General Manager—Officer
(Strike out two)

In Witness Whereof ..... the Exhibitor, operating the ..... Theatre, located at ..... Street in the ..... has
(*City & State*)
on ..... executed this application, which upon
(*Date*)
written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the newsreels specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Metro-Goldwyn-Mayer Distributing Corporation
By .....
(This signature is for identification only and is not an acceptance)

Exhibitor ..... L.S.
An Individual—A Partnership—A Corporation
(Strike out two)
By .....
Partner—General Manager—Officer
(Strike out two)
Lessee)
.) (Strike out one)
Owner)

Accepted, Approved and Countersigned at New York, N. Y.
Date .....

Metro-Goldwyn-Mayer Distributing Corporation (L.S.)
By .....
Vice-President or Sales Manager

White—Home Office; Pink—Exhibitor; Yellow—Branch; Green—Exhibitor's Application.

Printed in U. S. A.

Branch	Territory Letter	Exhibitor's Record Card

Contract Register	Contract Number	Amount (Original Term)

3061 Exhibition Contract (continued).

Warranties, etc. As To Recorded Sound.

Fourth: (a) "Recorded sound", as used in this agreement, is deemed to mean the spoken words, music or other sounds recorded upon a positive print or upon a record disc or other similar devices separate and apart from a positive print, for use in synchronism therewith. Distributor does not warrant that such recorded sound will be recorded on the positive print or on record discs or other similar devices, and reserves the right to use any one or more methods of recording it may from time to time determine.

(b) The Exhibitor warrants and agrees first, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs, or other similar devices; and second, that if copyrighted musical compositions are included in such recorded sound, the Exhibitor shall at the time of the exhibition of each of such newsreels and the reproduction of such recorded sound, have an effective license from the copyright proprietor thereof or from any licensee of such copyright proprietor publicly to perform the said musical compositions.

(c) The Exhibitor agrees, first to run all of said newsreels on the same size reels as furnished by Distributor; second, to return to Distributor's Exchange all damaged or broken parts of all sound records, discs or other similar devices, if any have been delivered to Exhibitor hereunder, immediately following the last exhibition of the newsreel with which such sound records are used; and third, if such recorded sound is recorded on records, discs or other devices, to replace with black, blank, positive stock all parts removed from the positive print of any newsreel while in the Exhibitor's possession, but Exhibitor shall have no right to remove any part of the positive print except as specifically authorized elsewhere in this license.

Clearance And Run.

Fifth: During the life of this contract the Distributor agrees not to exhibit or license the exhibition of any such newsreels in conflict with the "run" or prior to the expiration of the "clearance period", if any, in the Schedule specified, but it is agreed that any violation hereof by Distributor shall not affect this contract except as to the particular newsreel as to which such violation has occurred, and that the damage that may be claimed by Exhibitor shall not exceed the amount of the license fee herein provided for such particular newsreel, or, if such newsreel has been contracted for on the basis of a guarantee against a percentage, shall not exceed the amount of such guarantee, or if upon a straight percentage basis, shall not exceed the average amount paid by Exhibitor to Distributor for the newsreels of Distributor theretofore exhibited by Exhibitor hereunder. Unless otherwise provided herein, such "clearance period" shall be computed from the last date of exhibition of each newsreel as fixed herein. If "clearance" is granted hereunder against a specified theatre or theatres which "clearance" shall indicate that it was the intention of the Distributor to grant such "clearance" against all of the theatres in the immediate neighborhood or vicinity of the Exhibitor's theatre, then, unless otherwise provided in the Schedule such "clearance" shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

Delivery And Return Of Prints And Records.

Sixth: The Distributor agrees to deliver to the Exhibitor during the period specified in Article First hereof or otherwise in the Schedule provided for a positive print with recorded sound suitable for exhibition of each of such newsreels for exhibition at the said theatre on the date specified or on the dates determined as herein provided. Delivery of such positive prints by the Distributor to the Exhibitor at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange

shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to the Exhibitor or at the place where the Exhibitor's theatre is located prints at least one hour before the usual time for the opening of the Exhibitor's Theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder with the reels and containers and all records, discs or other similar devices furnished therewith, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers and records, discs, or other similar devices from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints, as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints and records, discs, or other similar devices elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print and/or any records, discs or other similar devices properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print and/or any records, discs, or other similar devices by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print and/or any records, discs or other similar devices to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print and/or records, discs or other similar devices to any other exhibitor the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any so caused such other exhibitor.

It is understood and agreed that Distributor is hereby given the option of delivering prints and/or sound records of any of the newsreels directly to Exhibitor from Distributor's exchange or routed to Exhibitor through another exhibitor, and that in case of any delay in delivery

or non-delivery of any prints and/or sound records so "routed" for any cause beyond the control of Distributor Exhibitor does hereby release and relieve Distributor of any and all claims for damages or otherwise therefor.

Selection Of Playdates.

Seventh: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said newsreels shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said newsreels are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such newsreel will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Loss Of And Damage To Prints And Records.

Eighth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print and for all records, discs, or other similar devices lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such pay-

ment, however, shall not transfer title to or any interest in any such positive print, records, discs or other similar devices to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Exhibitor shall not be liable for the damage or destruction of any positive print, records, discs or other similar devices provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print, records, discs or other similar devices. If any positive print, records, discs or other similar devices shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print and or record, disc or other similar device was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage (or number of records) so damaged or destroyed.

Assignment.

Ninth: This contract shall not be assigned by either party without the written acceptance of the assignees, and the written consent of the other party; provided, that if Distributor consents to an assignment by Exhibitor, such consent shall not relieve the Exhibitor of liability hereunder unless the Distributor consents in writing to release the Exhibitor from such liability.

Exhibition And Advertising.

Tenth: The Exhibitor agrees to run newsreels as delivered without alteration, excepting within the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each newsreel as a "Hearst Metrotone News."

In all newspaper advertising and publicity issued by the

Exhibitor relating to said newsreels the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of said newsreels must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Exhibitor agrees not to advertise any of the newsreels herein provided for by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to nor until after the completion of the exhibition thereof by any other exhibitor having the right to a run thereof prior to the run herein granted to Exhibitor in the same city, town or zone; and it is agreed that upon any violation hereof by Exhibitor Distributor shall have the right (in addition to any and all other rights and remedies) to withhold delivery to Exhibitor of any newsreel as to which such violation occurs.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other exhibition contract with any other exhibitor.

Warranty As To Advertising.

Eleventh: The Distributor warrants that the newsreels herein provided for will not contain any advertising matter for which compensation is received by the Distributor.

Taxes.

Twelfth: The Exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of positive prints of the newsreels and/or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Default.

Thirteen: In the event of default by Exhibitor in exhibiting or paying for any newsreel in accordance with the provisions hereof, or in furnishing any box-office statement or in giving Distributor's representatives access to the theatre and/or to Exhibitor's books and records in connection with percentage engagements as herein provided, or if Exhibitor shall exhibit or permit the exhibition of any of the newsreels at any time or place other than as herein specified, or if Exhibitor becomes insolvent or is adjudicated a bankrupt or executes an assignment for the benefit of creditors, or if a receiver is appointed for any of Exhibitor's property, or upon any default by Exhibitor under any other exhibition contract(s) between the parties hereto, or upon failure or refusal of Exhibitor to furnish any box-office statement or give Distributor's representative access to the theatre and/or to Exhibitor's books and records in connection with percentage engagements as provided in any such other exhibition contract, then upon the happening of any one or more of said events, Distributor may at its option (1) terminate this contract and/or such other contract(s) or (2) suspend delivery of additional newsreels hereunder and/or motion pictures under any such other contract(s) until such default or defaults shall cease and be remedied, or (3) demand for its protection and as security for the complete performance by Exhibitor of this and all such other contracts between the parties hereto, payment by Exhibitor of a sum not exceeding five hundred dollars ($500.00) under this and each such other contract, to be retained by Distributor until the complete performance of all such contracts, and in case Exhibitor shall fail or refuse to pay the amount so demanded within seven (7) days after demand Distributor may suspend service under this contract and any or all such other contracts until such sum shall be paid as to each contract, and/or terminate this contract and/or any or all such other contracts. It is understood and agreed that the exercise of any of said remedies shall be in addition to and without prejudice to any right or remedy of Distributor against Exhibitor at law or in equity and/or provided for elsewhere in this agreement, by reason of any such breach.

It is agreed that in the event of the failure or refusal of

Exhibitor to pay the license fee of any one or more of the newsreels covered by this contract or of any one or more of the motion pictures covered by any other exhibition contract(s) between the parties hereto, Distributor may at its option declare such failure or refusal a breach of this entire contract and/or such other contract(s) entitling Distributor to recover from Exhibitor as damages therefor the amount payable as license fees in respect of all newsreels and/or motion pictures not theretofore exhibited and/or paid for pursuant to the provisions of this contract and/or such other contract(s).

Prevention Of Performance.

Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said newsreels for causes beyond their direct control then this license in respect to each such newsreel shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Waiver.

Fifteenth: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Verbal Promises Representations.

Sixteenth: This Contract Is Complete And No Promises Or Representations Have Been Made By Either Party To The Other Except As Set Forth Herein.

Arbitration.

Seventeenth: It is understood and agreed that all claims and controversies arising hereunder shall be determined by arbitration as follows (hereby expressly waiving the oath of the arbitrators):

Either the Exhibitor or Distributor shall appoint an arbitrator and give written notice of such appointment to the other party. Within five (5) days after the receipt

of such notice of appointment, the other party shall appoint a second arbitrator and give written notice of such appointment to the other arbitrator and to the other party. The two arbitrators so selected shall within three (3) business days thereafter select a third arbitrator, and the three (3) arbitrators shall thereupon meet and determine the matter. The hearing of any such controversy shall be in the city wherein is situated the exchange of the Distributor from which the Exhibitor is selected, unless the parties agree in writing that such hearing be had in some other place.

The arbitrators appointed hereunder shall proceed forthwith to hear and determine the matter or matters referred to them for determination and the evidence submitted to them, and may require the parties to appear and produce such accounts, documents and witnesses as the arbitrators may require.

The arbitrators shall have power to determine such dispute or controversy, to make findings of fact in respect thereof, and to direct specific performance of a contract, and/or to determine that the same has been breached in whole or in part, and/or that damages on such account shall be paid.

The decision or award of a majority of the three (3) arbitrators herein provided for shall be final and binding and conclusive upon the parties hereto.

If either party fails or refuses to name the arbitrator to be appointed by such party as herein provided, or if any arbitrator so named shall fail or refuse to act, or be unable or unqualified to serve and another arbitrator qualified and then available to act is not then appointed, another arbitrator may be appointed by the other party hereto.

If the arbitrators appointed by or for the respective parties shall fail to agree upon such third arbitrator, such third arbitrator may be appointed by the then Acting President of the Chamber of Commerce of the State of New York, or if there be none, then by the Chief Judge of the Court of Appeals of the State of New York.

The parties hereto further agree to abide by and forthwith comply with any decision and/or award of the arbitrators or a majority of them and consent that any such decision and/or award shall be enforcible in or by any

court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a State in which such hearing would otherwise not be had, for an order to proceed to arbitrate, in which case such hearing shall be and in such place as the court to which such application is made may lawfully direct.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the newsreels and/or pictures provided for in this and in each other existing license agreement between the parties hereto and/or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all newsreels and/or motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of the arbitrators in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party of this or any other existing license agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

Acceptance Of Application.

Eighteenth: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print or sound records of any of the newsreels or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof if said theatre of Exhibitor is located east of the Mississippi River, and within thirty (30) days after the date thereof if located west of said River, said application shall be deemed withdrawn and Distributor shall forthwith return any sums paid on account thereof by the Exhibitor.

This application and any application for other motion pictures of the Distributor executed by the Exhibitor at the same time shall, for the purpose of this Article only, be deemed one application unless an agreement to the contrary contained in the Schedule is specifically signed by the Exhibitor.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor shall be forwarded to the Exhibitor.

(over)

3062

Metro-Goldwyn-Mayer Pictures
Distributed by
Loew's Incorporated

Exhibition Contract (Continued)
1936-37 Junior Feature Productions

Notice to Exhibitor: This is not a Standard form of Contract. It has been formulated individually by Distributor.

Arbitration

Twentieth: It is understood and agreed that all claims and controversies arising hereunder shall be determined by arbitration as follows (hereby expressly waiving the oath of the arbitrators):

Either the Exhibitor or Distributor shall appoint an arbitrator and give written notice of such appointment to the other party. Within five (5) days after the receipt of such notice of appointment the other party shall appoint a second arbitrator and give written notice of such appointment to the other arbitrator and to the other party. The two arbitrators so selected shall within three (3) business days thereafter select a third arbitrator, and the three (3) arbitrators shall thereupon meet and determine the matter. The hearing of any such controversy shall be in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place.

The arbitrators appointed hereunder shall proceed forthwith to hear and determine the matter or matters referred to them for determination and the evidence submitted to them, and may require the parties to appear and produce such accounts, documents and witnesses as the arbitrators may require.

The arbitrators shall have power to determine such dispute or controversy, to make findings of fact in respect thereof, and to direct specific performance of a contract, and/or to determine that the same has been breached in whole or in part, and/or that damages on such account shall be paid.

The decision or award of a majority of the three (3) arbitrators herein provided for shall be final and binding and conclusive upon the parties hereto.

If either party fails or refuses to name the arbitrator to be appointed by such party as herein provided, or if any arbitrator so named shall fail or refuse to act, or be unable or unqualified to serve and another arbitrator qualified and then available to act is not then appointed, another arbitrator may be appointed by the other party hereto.

If the arbitrators appointed by or for the respective parties shall fail to agree upon such third arbitrator, such third arbitrator may be appointed by the then Acting President of the Chamber of Commerce of the State of New York, or if there be none, then by the Chief Judge of the Court of Appeals of the State of New York.

The parties hereto further agree to abide by and forthwith comply with any decision and or award of the arbitrators of a majority of them, and consent that any such decision and or award shall be enforcible in or by any court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a State in which such hearing would otherwise not be had, for an order to proceed to arbitrate, in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and or in each existing exhibition contract entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation and or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbi-

tration any such claim or controversy or to abide by and comply with the decision or the award of the arbitrators in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party of this or any other existing license agreement between the parties.

Each of the parties hereto without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

Twenty-first: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule

Title or Brand	Number in Series	Release Numbers
M-G-M Musical Comedies	6	R401 to R406
Crime Doesn't Pay	6	P411 to P416
Fitzpatrick Traveltalks	12	T501 to T513
M-G-M Miniatures	10	M521 to M530
Happy Harmonies Cartoons	18	W531 to W548
M-G-M Pete Smith Specialties	18	S551 to S568
M-G-M Tabloid Musicals	10	B571 to B580
Hal Roach—Our Gang Comedies	12	C581 to C592

(A) Exhibitor agrees to play the pictures contracted for in the order to which they shall be released by the Distributor in the territory in which the below named theatre is located. In the event, however that the Distributor serves the Exhibitor any picture out of its release order, this shall not be regarded as a waiver by Distributor of the Exhibitor's obligation to take all pictures released by the Distributor under this contract, and in such case the Exhibitor shall play all pictures which are released prior and subsequent to the pictures served to the Exhibitor out of its order.

(B) It is agreed that if the number of days of exhibition selected, designated or otherwise agreed upon, and

confirmed in writing by Distributor for any motion pictur licensed hereunder shall be less than the maximum numbe of days specified in the Schedule hereof with respect t such motion picture, then regardless of the number o days specified in said Schedule the license hereby grante to Exhibitor as to such motion picture shall be limited t the number of days of exhibition so selected and con firmed, unless Exhibitor prior to the last playdate so con firmed by Distributor shall secure Distributor's consen in writing to exhibit such motion picture an additional da or days up to the maximum number of days specified i said Schedule.

It is further understood and agreed that the licens hereby granted shall not be deemed to include—

(a) any right of exhibition of any motion pictur licensed hereunder at any time other than on the date o dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing b Distributor to Exhibitor for such picture; nor

(b) any right of exhibition of any motion pictur licensed hereunder other than by means of the print of th picture furnished to Exhibitor by Distributor for the express purpose of exhibition on the date or dates of ex hibition so selected designated or otherwise agreed upon as herein provided, and confirmed in writing by Distribu tor to Exhibitor for such picture.

(C) Unless otherwise expressly provided in the Sched ule hereof, the license hereby granted shall not be deemed to include the right to exhibit any of the motion pictures in whole or in part at any so-called midnight performance viz., at any time between 12:01 A. M. and 6 A. M.

(D) In case Exhibitor is granted a second and or sub sequent run hereunder Distributor may at its option re quire any of the motion pictures to be exhibited by Ex hibitor as a prior run, and Exhibitor agrees so to exhibit same.

(E) It is understood and agreed that if the print of any of the motion pictures contracted for hereunder is more than 1000 linear feet in length Distributor may fur nish such print to Exhibitor mounted on a reel or reels of 2000 feet maximum capacity.

Run ..... Clearance .....
Playing Arrangement(s)

Exhibitor agrees to play the Junior Features licensed hereunder as available, commencing _____ and to pay the total license fees of $_____ in _____ consecutive weekly installments of $_____ each week starting _____, and a further payment of _____ for the last week. It is further agreed that in the event Exhibitor fails to play in accordance herewith no credit is to be allowed Exhibitor because prints are not available or are in poor condition.

(F) Separate Applications: It is expressly understood and agreed that the approval or rejection of this application by Distributor shall not be deemed an approval or rejection of any other application or applications signed by Exhibitor at the same time or at any other time.

Exhibitor by executing this application acknowledges that Distributor has two different forms of exhibition contract for the product hereby licensed and has offered Exhibitor the choice, and that Exhibitor has of his (its) own free will selected this form.

(End of Schedule)

Optional Arbitration Clause

Optional Clause: The foregoing Article Twentieth is optional with the parties hereto. If it is desired to make such article a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Article shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Article Twentieth, providing voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

_____

Representative of the Distributor duly authorized to agree to the foregoing Article Twentieth

Exhibitor _____ L. S.

An Individual—A Partnership—A Corporation
(Strike out two)

By _____

Partner—General Manager—Officer
(Strike out two)

In Witness Whereof
the Exhibitor, operating the
Theatre, located at
Street in the
(City & State)
has on executed th
(Date)
application, which upon written acceptance thereof b
the Distributor shall be deemed to be the license of th
said Exhibitor for the exhibition of the motion picture
specified in the Schedule, but only at the said Theatre i
accordance with the terms and conditions hereof.
Accepted, Approved and Countersigned at New York, N. Y
Date

Loew's Incorporated (L.S.)
By
Vice-President or Sales Manager.

White—Home Office: Pink—
Exhibitor: Yellow—Branch;
Green—Exhibitor's Application.
Printed in U. S. A.

Loew's Incorporated
(Distributor of Metro-Goldwyn-Mayer Pictures
By
(This signature is for identification only, and i
not an acceptance)

Exhibitor L. S
An Individual—A Partnership—A Corporation
(Strike out two)

By
Partner—General Manager—Officer
(Strike out two)

Lessee

Owner

(Strike out one)

Branch Territory Letter Exhibitor's Record Car
Contract Register Contract Number Amount

3063 Exhibition Contract

Agreement, made in one or more counterparts between Loew's Incorporated, a corporation (hereinafter referred to as "the Distributor"), party of the first part, and the exhibitor, hereinafter named and referred to as the "Exhibitor", operating the theatre or theatres hereinafter designated, party of the second part.

Witnesseth: The parties hereto agree as follows:

First: (a) The Distributor hereby grants the Exhibitor, and the latter accepts, a license subject to the terms and conditions hereinafter stated, and those printed upon the reverse side hereof which are made a part of this contract to exhibit (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first motion picture deliverable hereunder, unless otherwise in the Schedule provided) In Synchronism With Recorded Sound each of the motion pictures designated in the Schedule at said theatre only for the number of successive days in the said Schedule provided. This license is under the respective copyrights of said motion pictures and under any copyright which may be in force with respect to any matter included in such recorded sound.

If more than one theatre is hereinafter designated no motion picture is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

(b) If for any reason less than the full number of pictures of any brand hereby contracted for are generally released by Distributor within the period September 1, 1936, to August 31, 1937, this contract shall be deemed to be only for the actual number of pictures of such brand released during said period ending August 31, 1937.

Time and Place of Exhibition

Second: The Exhibitor agrees to exhibit under said license said motion pictures with recorded sound, but only at the theatre herein specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not allow any positive print thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or

to permit the exhibition of any such positive print at an other time or place. Such license shall be specifically fo such exhibition of such motion pictures, and for no othe purpose.

Payment

Third: The Exhibitor agrees to pay for such license a to each of such motion pictures the fixed sums herein speci fied at least three (3) days in advance of the date of ship ment from the Distributor's Exchange or from the las previous exhibitor of the positive print thereof.

Exhibitor hereby expressly grants Distributor the righ to demand and receive, as a condition precedent to delivery of the print and or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor under this or any other exhibition contract(s) between the parties hereto and or under any exhibition con tract(s) entered into between Exhibitor and Metro-Gold wyn-Mayer Distributing Corporation and Distributor may require such payment of all sums then due by means of a C. O. D. shipment or otherwise.

Fourth: It is agreed that all payments to Distributor hereunder shall be made at the Exchange of Distributor out of which Exhibitor is served.

Warranties, etc., as to Recorded Sound

Fifth: (a) "Recorded sound", as used in this agreement is deemed to mean the spoken words, music or other sounds recorded upon a positive print of a motion picture or upon a record, disc or other similar devices separate and apart from a positive print, for use in synchronism therewith. Distributor does not warrant that such recorded sound will be recorded on the positive print or on records, discs or other similar devices, and reserves the right to use any one or more methods of recording it may from time to time determine.

(b) The Exhibitor warrants and agrees first, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs, or other similar devices; and second, that if copyrighted musical compositions are included in such recorded sound, the

Exhibitor shall at the time of the exhibition of each of such motion pictures and the reproduction of such recorded sound, have an effective license from the copyright proprietor thereof or from any licensee of such copyright proprietor publicly to perform the said musical compositions.

(c) The Exhibitor agrees, first, to run all of said motion pictures on the same size reels as furnished by Distributor; second, to return to Distributor's Exchange all damaged or broken parts of all sound records, discs or other similar devices, if any have been delivered to Exhibitor hereunder, immediately following the last exhibition of the motion picture with which such sound records are used; and third, if such recorded sound is recorded on records, discs or other devices, to replace with black, blank, positive stock all parts removed from the positive print of any motion picture while in the Exhibitor's possession, but Exhibitor shall have no right to remove any part of the positive print except as specifically authorized elsewhere in this license.

Clearance and Run

Sixth: During the life of this contract the Distributor agrees not to exhibit or license the exhibition of any such motion pictures in conflict with the "run" or prior to the expiration of the "clearance period", if any, in the Schedule specified, but it is agreed that any violation hereof by Distributor shall not affect this contract except as to the particular motion picture as to which such violation has occurred, and that the damage that may be claimed by Exhibitor shall not exceed the amount of the license fee herein provided for such particular motion picture, or, if such motion picture has been contracted for on the basis of a guarantee against a percentage, shall not exceed the amount of such guarantee, or if upon a straight percentage basis shall not exceed the average amount paid by Exhibitor to Distributor for the motion pictures of Distributor theretofore exhibited by Exhibitor hereunder. Unless otherwise provided herein, such "clearance period" shall be computed from the last date of exhibition of each motion picture as fixed herein. If "clearance" is granted hereunder against a specified theatre or theatres which "clearance" shall indicate that it was the intention of the Distributor to grant such "clearance" against all of the theatres in the

immediate neighborhood or vicinity of the Exhibitor's theatre, then, unless otherwise provided in the Schedule, such "clearance" shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

Delivery and Return of Prints and Records

Seventh: The Distributor agrees to deliver to the Exhibitor during the period specified in Article First hereof or otherwise in the Schedule provided for a positive print with recorded sound suitable for exhibition of each of such motion pictures for exhibition at the said theatre on the date specified or on the dates determined as herein provided. Delivery of such positive prints by the Distributor to the Exhibitor or to the Exhibitor's authorized agent at the Distributor's Exchange or to a common carrier or to the United States postal authorities for mailing shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to the Exhibitor or at the place where the Exhibitor's theatre is located prints at least one hour before the usual time for the opening of the Exhibitor's Theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder with the reels and containers and all records, discs or other similar devices furnished therewith, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers and records, discs, or other similar devices from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints, (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints and records, discs, or other similar devices elsewhere than to the Distributor's exchange transportation charge; collect. It is agreed that the delivery of a positive print

and/or any records, discs or other similar devices properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print and/or any records, discs, or other similar devices by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print and/or any records, discs or other similar devices to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print and/or any records, discs or other similar devices to any other exhibitor the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

It is understood and agreed that Distributor is hereby given the option of delivering prints and/or sound records of any of the motion pictures directly to Exhibitor from Distributor's exchange or routed to Exhibitor through another exhibitor, and that in case of any delay in delivery or non-delivery of any prints and/or sound records so "routed" for any cause beyond the control of Distributor Exhibitor does hereby release and relieve Distributor of any and all claims for damages or otherwise therefor.

Selection of Playdates

Eighth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor or Metro-Goldwyn-Mayer Distributing Corporation to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Loss of and Damage to Prints and Records

Ninth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print and for all records, discs, or other similar devices lost, stolen or destroyed or injured in any way in the intervals between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print, records, discs or other similar devices to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within thirty (30) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive print, records, discs or other similar devices provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print, records, discs or other similar devices. If any positive print, records, discs or other similar devices shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have tele-

graphed the Distributor's exchange that such print and/or record, disc or other similar device was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage (or number of records) so damaged or destroyed.

Description and Title of Motion Pictures: Reissues

Tenth: The Exhibitor shall not be required to accept for any motion picture described in the Schedule as the motion picture of a star, or of a director, or based upon a specified story, book or play, or by an identifying description, any other motion picture of a different star or different director, or based upon a different story, book or play, or not corresponding to such identifying description, as the case may be. Nothing herein contained shall limit the right of the Distributor to change the title of any such motion picture, or as respects any motion picture based upon any story, book or play, prevent the making of any alterations, changes in or adaptations thereof.

The Distributor warrants that none of the motion pictures licensed hereunder are reissues from old negatives or old negatives renamed, except those specifically set forth as such in the Schedule.

Assignment

Eleventh: This contract shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if Distributor consents to an assignment by Exhibitor, such consent shall not relieve the Exhibitor of liability hereunder unless the Distributor consents in writing to release the Exhibitor from such liability.

Exhibition and Advertising

Twelfth: The Exhibitor agrees to run motion pictures (excepting "news reels"), as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each motion picture as a "Metro-Goldwyn-Mayer Picture."

In all newspaper advertising and publicity issued by the Exhibitor relating to said motion pictures the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of said motion pictures must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Exhibitor agrees not to advertise any of the motion pictures herein provided for by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise, prior to nor until after the completion of the exhibition thereof by any other exhibitor having the right to a run thereof prior to the run herein granted to Exhibitor in the same city, town or zone; and it is agreed that upon any violation hereof by Exhibitor Distributor shall have the right (in addition to any and all other rights and remedies) to withhold delivery to Exhibitor of any motion picture as to which such violation occurs.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other exhibition contract with any other exhibitor.

Warranty as to Advertising

Thirteenth: The Distributor warrants that the motion pictures herein provided for will not contain any advertising matter for which compensation is received by the Distributor.

Taxes

Fourteenth: The Exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of positive prints of the motion pictures and/or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be

fixed in the manner determined by the then President of the American Arbitration Association.

Default

Fifteenth: In the event of default by Exhibitor in exhibiting or paying for any motion picture in accordance with the provisions hereof, or in furnishing any box-office statement or in giving Distributor's representative access to the theatre and/or to Exhibitor's books and records in connection with percentage engagements as herein provided, or if Exhibitor shall exhibit or permit the exhibition of any of the motion pictures at any time or place other than as herein specified, or if Exhibitor becomes insolvent or is adjudicated a bankrupt or executes an assignment for the benefit of creditors, or if a receiver is appointed for any of Exhibitor's property, or upon any default by Exhibitor under any other exhibition contract(s) between the parties hereto, or under any exhibition contract(s) entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation or upon failure or refusal of Exhibitor to furnish any box office statement or give Distributor's representative access to the theatre and or to Exhibitor's books and records in connection with percentage engagements as provided in any such other exhibition contract, then upon the happening of any one or more said events, Distributor may at its option (1) terminate this contract and/or such other contract(s) or (2) suspend the delivery of additional motion pictures hereunder and/or under any such other contract(s) until such default or defaults shall cease and be remedied, or (3) demand for its protection and as security for the complete performance by Exhibitor of this and all such other contracts between the parties hereto, payment by Exhibitor of a sum not exceeding five hundred dollars ($500.00) under this and each such other contract, to be retained by Distributor until the complete performance of all such contracts, and in case Exhibitor shall fail or refuse to pay the amount so demanded within seven (7) days after demand Distributor may suspend service under this contract and any or all such other contracts until such sum shall be paid as to each contract, and/or terminate this contract and/or any or all such other contracts. It is understood and agreed that the exercise of any said remedies shall be

In addition to and without prejudice to any right or remedy of Distributor against Exhibitor at law or in equity and/or provided for elsewhere in this agreement, by reason of any such breach.

It is agreed that in the event of the failure or refusal of Exhibitor to pay the license fee of any one or more of the motion pictures covered by this contract or any other exhibition contract(s) between the parties hereto. Distributor may at its option declare such failure or refusal a breach of this entire contract and/or such other contract(s) entitling Distributor to recover from Exhibitor as damages therefor the amount payable as licensee fees in respect of all motion pictures not theretofore exhibited and/or paid for pursuant to the provisions of this contract and/or such other contract(s).

Prevention of Performance

Sixteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Waiver

Seventeenth: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Verbal Promises: Representations

Eighteenth: This Contract Is Complete And No Promises Or Representations Have Been Made By Either Party To The Other Except As Set Forth Herein.

Acceptance of Application

Nineteenth: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print or sound records of any of the motion pictures or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof if said theatre of the Exhibitor is located east of the Mississippi River, and within thirty (30) days after the date thereof if located west of said River, said application shall be deemed withdrawn and Distributor shall forthwith return any sums paid on account thereof by the Exhibitor.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor shall be forwarded to the Exhibitor.

(over)

3064 PLAINTIFF EXHIBIT 47

JACKSON PARK THEATRE
As Compared With
MARYLAND THEATRE

ADMISSIONS

Year		Jackson Park	Maryland	Excess Maryland Jackson Par
(Pro-rated)	7/28/37—12/31/37	$ 44,038.34	$ 63,294.55	$ 19,256.21
	1938	92,934.83	124,339.09	31,404.26
	1939	88,490.81	130,194.54	41,703.73
	1940	83,772.77	127,986.01	44,213.24
	1941	89,778.40	120,605.81	30,827.41
(Pro-rated)	1/1/42—7/27/42	54,360.80	74,476.48	20,115.68
		$453,375.95	$640,896.48	$187,520.53

FILM RENTAL

(Pro-rated)	7/28/37—12/31/37	$ 10,597.19	$ 18,717.54	$ 8,120.35
	1938	26,299.94	41,478.93	15,178.99
	1939	27,134.10	40,420.97	13,286.87
	1940	27,521.94	42,448.35	14,926.41
	1941	27,185.74	40,104.99	12,919.25
	1/1/42—7/27/42	14,773.82	21,880.14	7,106.32
		$133,512.73	$205,050.92	$ 71,538.19

Net excess Increased Admissions over Increased Film Rental $115,982.34

PLAINTIFF'S EXHIBIT 48

JACKSON PARK THEATRE

	7/28/37 —12/31/37	1938	1939	1940	1941	1/1/42 —7/27/42	Grand Total
Net Profit per Income Tax Returns	$ 13,215.32	$ 23,812.96	$ 20,140.60	$ 13,524.36	$ 13,150.05	$ 10,496.72	$ 94,340.01
Add:							
Increased Admissions—to equal admission of Maryland Theatre	19,256.21	31,404.26	41,703.73	44,213.24	30,827.41	20,115.68	187,520.53
	32,471.53	55,217.22	61,844.33	57,737.60	43,977.46	30,612.40	281,860.54
Deduct:							
Universal Film Rental to equal Film Rental of Maryland	8,120.35	15,178.99	13,286.87	14,926.41	12,919.25	7,106.32	71,538.19
Adjusted Net Profit	24,351.18	40,038.23	48,557.46	42,811.19	31,058.21	23,506.08	210,322.35
Adjustments of Admissions & Film Rental	11,135.86	16,225.27	28,416.86	29,286.83	17,908.16	13,009.36	115,982.34
Average Net Profit for four (4) Years Period to 7/28/37 eliminating estimated "Bank Night" Receipts	18,927.00	44,000.00	44,000.00	44,000.00	44,000.00	25,073.09	220,000.00
Difference between Average Four Year Net Profit and Actual Net Profit for subsequent years	5,711.68	20,187.04	23,859.40	30,475.64	30,849.95	14,576.28	125,659.99

Plaintiff's Exhibit No. 48.

1713

3066 PLAINTIFF EXHIBIT 49

JACKSON PARK THEATRE

PROFIT AND LOSS STATEMENTS

CALENDAR YEAR

1936–1937–1938–1939–1940–1941–1942

(Copies of schedules supporting Income Tax Returns)

3067 PLANTIFF EXHIBIT 49

EDWARD I. BLOOM

Item 2, Schedule A—Income & Expense—Jackson Park Theatre
Supporting Form 1040 for the Calendar Year 1936

REVENUE		$104,628.20
EXPENSES—		
Film Entertainment	$ 22,107.91	
Advertising—Newspapers	2,003.79	
Posters & Trailers	1,210.75	
Programs & Pluggers	652.31	
Insurance, Licenses & Inspection Fees	1,781.70	
Payroll	19,627.12	
Maintenance & Repairs	4,626.43	
Projection Room	503.49	
Janitor Supplies	45.48	
Fuel, Light, Power & Lamps	2,232.27	
Uniforms	505.95	
Amortization of Improvements	418.40	
*Depreciation	1,777.80	57,573.40
		$ 47,054.80

NET INCOME—

This enterprise is owned and operated jointly by Edward I. Bloom and Marie C. Bloom The Gain is, therefore, allocated as follows:

Edward I. Bloom	$ 23,527.40
Marie C. Bloom	23,527.40
	$ 47,054.80

*Detail of Depreciation

Kind	Date Acq.	Cost	Allowable Prior Yrs.	Remain. Cost 1/1/36	Rate or Est. Remain. Life at 1/1/36	Depreciation 1/1/36–10/31/36 (Bldg. Sold 10/31/36)
Carpet	1933	$1,825.00	304 17	$1,520.83	33⅓%	$ 506.94
Canopy & Frames	1935	1,196.94	239 39	957.55	40%	398.98
Furniture	1935	1,469.61	88 19	1,381.62	12%	146.98
Motion Picture Eq	1935	3,702.05	370 20	3,331.85	20%	617.09
Fixt. & Equip.	7/1/33	1,000.00	250 00	750.00	10%	83.33
" " "	1934	49.00	8 55	40.45	10%	4.08
*Carpet	1936	23.21	—	23.21	33⅓%	.65
*Fixture & Equip.	1936	476.00		476.00	10%	19.84
						**$ 1,777.80

*Depreciation for 1936 based on average cost equal to 50% of full cost of addition.
**Only 10 months taken a/c theatre sold 10/31/36.

3068

PLAINTIFF EXHIBIT 49

THE JACKSON PARK BUILDING COMPANY

Item 1—Income & Expense—Jackson Park Theatre

Supporting Form 1065 for the Calendar Year 1936

REVENUE		$ 18,439.25
EXPENSES—		
Amortization of Improvements	$ 83.68	
*Depreciation	360.72	
Film Entertainment	5,092.91	
Fuel	238.51	
Insurance, Licenses, Inspection Fees & Dues	728.10	
Janitor's Supplies	1.98	
Maintenance & Repairs	907.30	
Newspaper Advertising	383.87	
Posters & Trailers	218.28	
Power & Light	251.15	
Programs	128.70	
Projection Room	26.78	
Salaries	3,725.62	12,102.69
NET INCOME		$ 6,386.56

*Detail of Depreciation.

Kind	Date Acquired	Cost	Allowance Prior Years	Remain. Cost 11/1/34	Rate or Est. Life at 11/1/34	Depreciation 11/1/34 to 12/31/34
Carpet	11/1/36	$1,013.89	—	$1,013.89	20 Months	$ 101.38
"	11/1/36	22.56	—	22.56	32 "	1.41
Canopy & Frames	11/1/36	558.57	—	558.57	14 "	79.80
Furniture	11/1/36	1,234.64	—	1,234.64	84 "	29.40
Motion Picture Eq.	11/1/36	2,714.85	—	2,714.85	44 "	123.40
Fixt. & Eq.	11/1/36	666.67	—	666.67	80 "	16.67
" " "	11/1/36	36.57	—	36.57	92 "	.80
" " "	11/1/36	456.16	—	456.16	116 "	7.86
						$ 360.72

NOTE: All the above Assets when acquired were **used**, the tax rates here applied being based upon cost and date of purchase to original owner.

Plaintiffs' Exhibit No. 49.

3069

PLAINTIFF EXHIBIT 49

THE JACKSON PARK BUILDING COMPANY

Item 2—Income & Expense—Jackson Park Theatre

Supporting Form 1065 for the Calendar Year 1937

REVENUE		$102,382.15
EXPENSES—		
Advertising	$ 4,204.86	
Amortization of Improvements	502.08	
*Depreciation	2,164.27	
Film Entertainment	24,636.87	
Heat & Electricity	4,404.40	
Insurance, Licenses, Inspection Fees & Dues	1,830.66	
Maintenance, Repairs & Supplies	11,853.50	
Payroll	21,891.95	
Payroll Tax—O. A. B.	169.86	71,658.56
NET INCOME		$30,723.59

*Detail of Depreciation.

Kind	Date Acquired	Cost	Allow. Prior Years	Remain. Cost 11/1/36	Rate or Est. Life at 11/1/36	Dep'n. 1937
Carpet	11/1/36	$1,013.89	$101 38	$ 912.51	20 Mos.	$ 608.34
"	11/1/36	22.56	1.41	21.15	32 "	8.46
Canopy & Frames	11/1/36	558.57	79 80	478.77	14 "	478.77
Furniture	11/1/36	1,234.64	29 40	1,205.24	84 "	176.38
Motion Picture Eq	11/1/36	2,714.85	123 40	2,591.45	44 "	740.40
Fixt. & Eq.	11/1/36	666.67	16 67	650.00	80 "	100.00
" " "	11/1/36	36.37	80	35.57	92 "	4.74
" " "	11/1/36	456.16	7 86	448.30	116 "	47.18
						$ 2,164.27

NOTE: All the above assets when acquired were **used**, the Depreciation rates here applied being based upon cost to and date of purchase by original owner.

3070 PLAINTIFF'S EXHIBIT 49

THE JACKSON PARK BUILDING COMPANY

Item 3—Income & Expense—Jackson Park Theatre

Supporting Form 1065 for the Calendar Year 1938

REVENUE			$92,934.8
EXPENSES—			
Advertising		$ 4,788.28	
Amortization of Improvements		502.08	
*Depreciation		1,381.33	
Film Entertainment		26,299.91	
Heat, Electricity, Gas & Water		5,074.01	
Insurance, Licenses, Inspection Fees, Dues & Legal		2,997.81	
Maintenance, Repairs & Supplies		5,136.21	
Payroll		21,856.74	
Payroll Tax—O. A. B		158.12	
" " —Illinois Unemployment		827.54	
" " —Federal Unemployment		43.78	
Taxes—Personal Property		56.00	69,121.
NET INCOME			$23,812.

*Detail of Depreciation

Kind	Date Acquired	Cost	Allow. Prior Years	Remain. Cost 1/1/38	Rate or Est. Life at 11/1/36	Dep'n. 1938
Carpet	11/1/36	$1,013.89	$709.72	$ 304.17	20 mos.	$ 304.
	11/1/36	22.56	9.87	12.69	32 mos.	8.
Furniture	11/1/36	1,234.64	205.78	1,028.86	84 mos.	176.
Motion Picture Eq.	11/1/36	2,714.85	863.80	1,851.05	44 mos.	740.
Fixt. & Eq.	11/1/36	666.67	116.67	550.00	80 mos.	100.
" " "	11/1/36	36.37	5.54	30.83	92 mos.	4.
" " "	11/1/36	456.16	55.04	401.12	116 mos.	47.
						$ 1,381.

NOTE: All the above assets when acquired were **used**, the Depreciation rates here applie being based upon cost to and date of purchase by **original** owner.

3071 PLAINTIFF'S EXHIBIT 49

THE JACKSON PARK BUILDING COMPANY

Item 3—Income & Expense—Jackson Park Theatre

Supporting Form 1065 for the Calendar Year 1939

REVENUE		$ 88,490.81
EXPENSES—		
Advertising	$ 4,734.74	
Amortization of Improvements	502.08	
Depreciation	1,072.93	
Film Entertainment	27,134.10	
Heat, Electricity, Gas & Water	5,298.74	
Insurance, Licenses, Inspec. Fees, Dues & Legal	2,109.10	
Maintenance, Repairs & Supplies	4,629.99	
Payroll	22,053.10	
Payroll Tax—Old Age	179.59	
" " —Illinois Unemployment	570.11	
" " —Federal Unemployment	65.73	68,350.23
NET INCOME		$ 20,140.60

*Detail of Depreciation:

Kind	Date Acquired	Cost	Allow. Prior Years	Remain Cost 1/1/39	Rate or Est. Life at 11/1/36	Dep'n. 1939
Carpet	11/1/36	$ 22.56	$ 18.33	$ 4.23	32 mos.	$ 4.23
Furniture	11/1/36	1,234.64	382.16	852.48	84 mos.	176.38
Motion Picture Eq.	11/1/36	2,714.85	1,604.20	1,110.65	44 mos.	740.40
Fixt. & Eq.	11/1/36	666.67	216.67	450.00	80 mos.	100.00
" " "	11/1/36	36.37	10.28	26.09	92 mos.	4.74
" " "	11/1/36	456.16	102.22	353.94	116 mos.	47.18
						$1,072.93

NOTE: All the above assets when acquired were **used**, the Dep'n rates here applied being based upon cost to and date of purchase by **original** owner.

3072

PLAINTIFF'S EXHIBIT 49

THE JACKSON PARK BUILDING COMPANY

Item 1—Income & Expense—Jackson Park Theatre

Supporting Form 1065 for the Calendar Year 1940

REVENUE		$83,772.77
EXPENSES—		
Admissions Tax	$ 2,095.11	
Advertising	4,378.67	
Amortization of Improvements	502.08	
*Depreciation	698.55	
Film Entertainment	27,521.94	
Heat, Electricity & Ice	5,406.05	
Insurance, Licenses, Inspec. Fees, Dues & Legal	2,103.10	
Maintenance, Repairs & Supplies	4,725.28	
Payroll	22,283.29	
Payroll Tax—F. I. C.	175.66	
" " —Illinois Unemployment	592.42	
" " —Federal "	66.26	70,248.41
NET INCOME		$13,524.36

*Detail of Depreciation.

Kind	Date Acq'd.	Cost	Allow. Prior Years	Remain. Cost 1/1/40	Rate or Est. Life at 11/1/36	Dep'n. 1940
Carpet	11/1/36	$ 22.56	$ 22.56	—	32 mos.	—
Furniture	11/1/36	1,234.64	558.54	$ 676.10	84 "	$ 176.38
Motion Picture Eq.	11/1/36	2,714.85	2,344.60	370.25	44 "	370.25
Fixt. & Eq.	11/1/36	666.67	316.67	350.00	80 "	100.00
" "	11/1/36	36.37	15.02	21.35	92 "	4.74
" "	11/1/36	456.16	149.40	306.76	116 "	47.18
						$ 698.55

NOTE: All the above assets when acquired were used, the Dep'n. rates here applied being based upon cost to and date of purchase by original owner.

3073 PLAINTIFF'S EXHIBIT 49

THE JACKSON PARK BUILDING COMPANY

Item 1—Income & Expense—Jackson Park Theatre

Supporting Form 1065 for the Calendar Year 1941

REVENUE		$89,778.40
EXPENSES—		
Admission Tax	$ 6,857.45	
Advertising	4,121.76	
Amortization of Improvements	502.08	
*Depreciation	328.30	
Film Entertainment	27,185.74	
Heat, Electricity & Ice	5,341.45	
Insurance, Licenses, Inspec. Fees, Dues & Legal	2,622.60	
Maintenance, Repairs & Supplies	5,133.40	
Payroll	23,664.46	
Payroll Tax—F. I. C.	180.86	
" " —Illinois Unemployment	488.36	
" " —Federal Unemployment	57.39	
Taxes—Personal Property	144.50	$76,628.35
NET INCOME		$13,150.05

*Detail of Depreciation.

Kind	Date Acq'd.	Cost	Allowable Prior Years	Remain. Cost 1/1/41	Rate or Est. Life at 11/1/36	Dep'n.
Furniture	11/1/36	$1,234.64	$ 734.92	$ 499.72	84 Mos.	$ 176.38
Motion Pic. Equip	11/1/36	2,714.85	2,714.85	—	44 Mos.	—
Fixt. & Equip.	11/1/36	666.67	416.67	250.00	80 Mos.	100.00
" " "	11/1/36	36.37	19.76	16.61	92 Mos.	4.74
" " "	11/1/35	456.16	196.56	259.60	116 Mos.	47.18
						$ 328.30

NOTE: All the above assets when acquired were **used**, the Dep'n. rates here applied being based upon cost to and date of purchase by original owner.

074

PLAINTIFF'S EXHIBIT 49

THE JACKSON PARK BUILDING COMPANY

Item 1—Income & Expense—Jackson Park Theatre

Supporting Form 1065 for the Calendar Year 1942

EVENUE		$95,394.39
XPENSES—		
Admissions Tax	$ 8,846.43	
Advertising	3,639.89	
*Depreciation	982.48	
Film Entertainment	25,925.13	
Heat, Electricity & Ice	5,279.21	
Insurance, Licenses, Inspec. Fees, Dues & Legal	2,201.53	
Maintenance, Repairs & Supplies	5,138.45	
Payroll	24,181.69	
Payroll Tax—F. I. C.	182.63	
" " —Illinois Unemployment	103.12	
" " —Federal Unemployment	54.05	
Taxes—Personal Property	50.00	76,974.61
ET INCOME		$18,419.78

*Detail of Depreciation.

Kind	Date Acquired	Cost	Allow. Prior Yrs.	Remain. Cost 1/1/42	Rate or Est Remain. Life at 11/1/36	Depn. 1942
Furniture	11/1/36	$1,457.39	$ 602.38	$ 855.01	12½ yrs.	$ 116.59
Carpets	11/1/36	1,219.27	1,219.27	—	3½ "	—
Motion Pict. Eq.	11/1/36	3,185.82	1,936.47	1,249.35	8½ "	374.80
Improvements	11/1/36	3,985.55	1,584.00	2,401.55	13 "	306.58
Cnpy. & Frames	11/1/36	642.90	390.81	252.09	8½ "	75.64
Fixtures & Eq	11/1/36	1,360.85	562.50	798.35	12½ "	108.87
		$11,851.78	$6,295.43	$5,556.35		$ 982.48

NOTE: Valuations of Assets adjusted to agree with IRA following audit of 1930-1941 returns.

3075 PLAINTIFFS' EXHIBIT 54.

(Filed Oct. 11, 1944, Roy H. Johnson, Clerk.)

September 3, 1936.

Chicago Exchange—Twentieth Century-Fox Film Corporation
Balaban & Katz Circuit

Schedule of Clearance—Season 1936-37

It is herewith agreed and understood that the Clearance as set up in contracts dated September 3rd, 1936 for Twentieth Century-Fox Features, Shorts and News is mutually terminated, and in its stead the following Clearance will prevail throughout Season 1936-37 for those theatres listed:

Chicago, 105 No. State St., Chicago, Ill.

It is understood that the provisions hereof relate only to the Photoplays actually licensed for exhibition by the Distributor. The Distributor has no interest in, nor does it desire to exercise any control over any Photoplays not leased by it, nor in the Clearance or Rental conditions requested or allowed by other Distributors or the owners of any Theatres so long as the provisions of this Schedule are observed in respect of Photoplays leased by the Distributor.

Roosevelt, 110 No. State St., Chicago, Ill.

No attempt is made by the Exhibitor to classify particular theatres as First Run or Subsequent Run Theatres, it being understood that the theatre in which a Photoplay is leased for a First Run exhibition in the particular locality in which such theatre is located, shall be deemed to be the First Run theatre as to such Photoplay in such locality and entitled to the Clearance and protection provided in this Schedule for any First Run theatre in such locality.

Apollo, Randolph & Clark, Chicago, Ill.

No theatre in the State of Illinois north of a latitudinal line running parallel to Springfield, including Springfield, Quincy and Galena, also Decatur, or in Indiana in LaPorte,

Starke, Pulaski, Porter, Jasper, Lake or Newton Counties to play prior to or during run at this theatre. Theatres in Lake, DuPage, Cook and Kane Counties, Illinois, not to play until last day in this theatre.

Garrick, 61 W. Randolph St., Chicago, Ill.

Second Run in Loop to play in same week with Harding or immediately following "A" Pre-release. Monroe, Woods, Clark, Casino to play in First Week of Chicago General Release. Rialto Theatre may play in "B" Pre-release, providing engagement is Second Run Loop. Pastime Theatre may play in "C" Pre-release.

United Artists, 45 W. Randolph St., Chicago, Ill.

In the event the Oriental plays in "A" or "B" Pre-release, First Run Clearance as outlined herein does not prevail. In the event the Oriental should move into Loop First Run, the territorial Clearance prevails.

Oriental, 20 W. Randolph St., Chicago, Ill.

The Exhibitor agrees through the terms of the contract to maintain the following minimum Admission Schedule for Week of Release played:

The following Protection Schedule for City of Chicago Release to be observed:

First Week—Second Week, and Third Week Open.

Fourth, Fifth, Sixth Week regular established "A" Pre-release theatres may play during this period. Minimum Adult Admission per person 30¢ Matinee until 6:30 P. M., after 6:30 P. M., 50¢.

Seventh, Eighth Week Regular established "B" Pre-release theatres may play during this period contingent upon "A" Pre-release protection clearance. Minimum Adult Admission per person 25¢ Matinee until 6:30 P. M., after 6:30 P. M., 40¢.

Ninth Week Regular established "C" Pre-release theatres may play this week. Minimum Adult admission per person 20¢ Matinee until 6:30 P. M., after 6:30 P. M., 30¢.

Tenth Week Regular established First Week theatres may play during this week. Minimum Adult admission per person 15¢ Matinee until 6:30 P. M., after 6:30 P. M., 25¢.

Minimum admission for Children at all times to be not less than 10¢ per person.

Marbro, 4124 W. Madison St., Chicago, Ill.

To play in "A" Pre-release week. Clearance over all theatres in Chicago west of Chicago River and in western part of Cook County, Ill. No theatre in this prescribed territory to play earlier than "B" Pre-release week, (except Harding) which is as follows: If Marbro plays in Fourth Week after Loop showing, 14 days after last day of Marbro run; if plays Marbro Fifth Week after Loop showing, 14 days after last day of Marbro run; if plays Marbro Sixth Week after Loop showing, 7 days after last day of Marbro run. No Theatre other than Senate, Congress and Paradise may play during "B" Pre-release.

Uptown, 4814 Broadway, Chicago, Ill.

To play in "A" Pre-release. Clearance over all theatres located in Chicago, Ill., north of Chicago River and in northern part of Cook County, Ill. No theatre in this prescribed territory to play earlier than "B" Pre-release, which is as follows: If Uptown plays in Fourth Week after Loop showing, 14 days after last day of Uptown run; if plays Uptown Fifth Week after Loop Run, 14 days after last day of Uptown run; if plays Uptown Sixth Week after Loop run, 7 days after last day of Uptown's run. No theatre other than Norshore, Nortown, Riviera, Pantheon, Varsity, Century or Sheridan may play during "B" Pre-release.

Tivoli, 6335 Cottage Grove Ave., Chicago, Ill.

To play in "A" Pre-release. To have 7 days' Clearance on Avalon and Southtown Theatres. Capitol may play immediately following. Clearance over all other Southside theatres including those in the southern part of Cook County, Ill., and Gary, Hammond and Indiana Harbor, Ind. No other theatre in this prescribed territory to play earlier than "B" Pre-release week, which is as follows: If Tivoli plays in fourth week after Loop Showing, 14 days after last day; if Tivoli plays in fifth week after Loop Showing, 14 days after last day; if Tivoli plays in sixth week after Loop Showing, 7 days. No theatre other than Tower, Piccadilly, Stratford, Regal to play in "B" Pre-release week. Hammond, Gary and Indiana Harbor, Ind., may play immediately following Tivoli Theatre run. Clearance on Lake County, Indiana, on those photoplays played the Southtown Theatre repeat on the Tivoli Theatre.

3076 Southtown, 610 W. 63d St., Chicago, Ill.

To play in "A" Pre-release, if clear on South Side. If repeat on Tivoli Theatre to play 7 days following Tivoli Theatre. Tower or Avalon may play week and week but not earlier. Clearance on Capitol, and all other South Side Theatres including those in the southern part of Cook County, Illinois and Gary, Hammond and Indiana Harbor, Indiana, and all of Lake County, Indiana. No other theatre in this prescribed territory to play earlier than "B" Pre-release Week. No theatre other than the Tower, Piccadilly, Stratford, Capitol and Regal to play in "B" Pre-release Week. Hammond, Gary and Indiana Harbor, Indiana may play immediately following.

Granada, 6427 Sheridan Rd., Chicago, Ill.

To play in "B" Pre-release Week. Devon may play in "C" Pre-release Week. Ridge, Calo and Bryn Mawr may play in First Week of Chicago General Release. Adelphi and Four Hundred may play in Second Week of Chicago General Release. Granada Theatre may play in "A" Pre-release Week.

Riviera, 4702 Broadway, Chicago, Ill.

To play in "B" Pre-release. Mode, DeLuxe, Calo, Bertha, Davis, Music Box, Bryn Mawr and Rosewood may play in First Week of Chicago General Release. Riviera in Second Week of Chicago General Release. Riviera Theatre may play in "A" Pre-release Week.

Harding, 2714 Milwaukee, Chicago, Ill.

To play in "B" Pre-release Week. Belpark may play in "C" Pre-release Week. Milford, Logan, Embassy and Irving may play in First Week of Chicago General Release. Harding Theatre may play in "A" Pre-release Week following Marbro Theatre.

Varsity, Evanston, Ill.

To play in "B" Pre-release Week. Clearance over the following theatres who may play as listed. DeLago, Howard and Highland Park, Illinois in "C" Pre-release Week. Wilmette, Illinois in First Week of Chicago General Release. Valencia, Evanston, Illinois in Second Week of Chicago General Release. Balance of Evanston, Illinois in Third Week of Chicago General Release.

Paradise, 231 N. Crawford Ave., Chicago, Ill.

To play in "B" Pre-release Week. May play in "A" Pre-release Week, in which event Paradise Theatre to have same clearance as Marbro Theatre.

Crystal, 2701 W. North Ave., Chicago, Ill.

To play in First Week of Chicago General Release. Biltmore, Cross, Grand (North Av.), Logan, Calday, Hub and Alvin may play in First Week of Chicago General Release. Vision, Harmony, Avon, Avalon, Rogers, Oak, Queen, Banner, Paulina, Armitage and New Strand, Second Week of Chicago General Release. Bell, Rio, Royal and Webster, Third Week of Chicago General Release. Crystal Theatre may play in "C" Pre-release Week, in which event the Biltmore and Crown may play in "C" Pre-release Week.

Gateway, 5216 Lawrence Ave., Chicago, Ill.

To play in "C" Pre-release Week. Terminal may play in "C" Pre-release Week. Park Ridge, Illinois, Metro, Irving, and Portage Park, First Week of Chicago General Release. Revue in Second Week of Chicago General Release, and Jeff Theatre, Third Week of Chicago General Release. New House to be in Fourth Week of Chicago General Release.

LaGrange, LaGrange, Ill.

To play in "C" Pre-release Week. Roxy Theatre, Berwyn, Ill. and Hinsdale Theatre, Hinsdale, Illinois may play in First Week of Chicago General Release. Brookfield, Illinois and Lyons, Illinois, Second Week of Chicago General Release. Western Springs, Illinois and Riverside, Illinois, Third Week of Chicago General Release.

Lakeside, 4730 Sheridan Rd., Chicago, Ill.

To play in First Week of Chicago General Release. DeLuxe, Mode and Bryn Mawr may play in First Week of Chicago General Release. Argussa in Second Week of Chicago General Release.

Manor, 5600 W. North Ave., Chicago, Ill.

To play in "C" Pre-release Week. Trio and Symphony may play in First Week of Chicago General Release. Plaisance, Ambassador and Austin, Second Week of Chicago General Release. New Home in Third Week of Chicago General Release.

Belmont, 1618 Belmont Ave., Chicago, Ill.

To play in "C" Pre-release Week. Covent, North Center, Buckingham may play in "C" Pre-release Week. Davis, Biograph, Rosewood, Bertha, Music Box and Julian or Vic, but not both, First Week of Chicago General Release. Easterly, Hollywood, Lincoln-Ripp and Hugg, Second Week of Chicago General Release.

Belpark, 3831 N. Cicero Ave., Chicago, Ill.

To play in "C" Pre-release Week. Will Rogers Theatre may play in "C" Pre-release Week. Rivoli, Irving, Embassy, Milford, Portage Park, Patio and Admiral, First Week of Chicago General Release. Karlov, Rose and Revue, Second Week of Chicago General Release. New Home in Third Week of Chicago General Release.

Berwyn, Berwyn, Ill.

To play in "C" Pre-release Week. Humy, Oakwyn, Ritz, Polace, Annette, Villas may play in First Week of Chicago General Release. Southern, Town and Hawthorne, Second Week of Chicago General Release.

Biltmore, 2010 Division St., Chicago, Ill.

To play in "C" Pre-release Week. Hub, Oakley, and Alvin may play in First Week of Chicago General Release. Harmony, Division, Queen, Oak, New Strand, Chopin, Paulina, Manor and Banner, Second Week of Chicago General Release. Royal in Third Week of Chicago General Release.

Central Park, 3535 W. Roosevelt Rd., Chicago, Ill.

To play in "C" Pre-release Week. Crawford, California, Douglas, White Palace and Homan may play in First Week of Chicago General Release. Lyric, Lexington, Lindy, 20th Century, Gold, Circle, Lawndale and Kedzie-Annex, Second Week of Chicago General Release. Independence, Hamlin, Garfield and Harrison, Third Week of Chicago General Release.

Century, Clark & Diversey, Chicago, Ill.

To play in "B" Pre-release Week. Buckingham, Vogue, Covent, Windsor and Belmont may play in "C" Pre-release Week. Lake Court, Biograph, Mode, Music Box and Vic,

First Week of Chicago General Release. Hollywood, Easterly, Claremont, Lakeshore, Lincoln-Ripp, Plaza, New Parkway and Ideal, Second Week of Chicago General Release.

Congress, 2136 Milwaukee Ave., Chicago, Ill.

To play in "B" Pre-release Week provided prices adjusted to "B" Pre-release Week. Belpark, Crown, Biltmore, Crystal and Tiffin, "C" Pre-release Week. Patio, Portage Park, Admiral, Alvin, Oakley, Logan, Embassy, Milford, Grand (North Avenue), First Week of Chicago General Release. Revue, Fox, Avalon, Rogers, Oak, Paulina, Banner, Chopin, Queen, Avon, Harmony, Rose, New Strand, Armitage and Royal, Second Week of Chicago General Release. Webster, Bell, Rio, Third Week of Chicago General Release.

3077 Maryland, 860 E. 63rd St., Chicago, Illinois.

To play in "C" Pre-release. Lexington, Jackson Park, Frolic, Hamilton, Harper and Hyde Park may play in First Week of Chicago General Release. Plaisance, Jefferson, Ann, Vernon, Park Manor and Kimbark, Second Week of Chicago General Release. Langley and Prairie, Third Week of Chicago General Release. Drexel or Midway, but not both, may play in First Week of Chicago General Release.

Norshore, 1725 Howard St., Chicago, Illinois.

To play in "C" Pre-release. Devon may play in "C" Pre-release. Howard and Ridge, First Week of Chicago General Release. Adelphi, Valencia and Four Hundred, Second Week of Chicago General Release. Norshore may play in "B" Pre-release in which event Howard may play in "C" Pre-release.

Nortown, 6320 N. Western Ave., Chicago, Illinois.

To play in "B" Pre-release. Century, Norshore, Pantheon and Sheridan may play in "B" Pre-release. Devon and Terminal "C" Pre-release. Davis, Metro, Ridge, Calo and Bryn Mawr, First Week of Chicago General Release. Adelphi and Four Hundred, Second Week of Chicago General Release.

Pantheon, 4642 Sheridan Rd., Chicago, Illinois.

To play in "C" Pre-release. Lakeside may play in "C" Pre-release. Mode, DeLuxe, Calo, Bertha, Davis, Music Box, Rosewood, Bryn Mawr First Week of Chicago General

Release. Argmore in Second Week of Chicago General Release. To play "B" Pre-release.

Regal, 4719 So. Parkway, Chicago, Illinois.

To play in "C" Pre-release. Michigan and Owl may play in First Week of Chicago General Release. Indiana, Apollo, Vernon, Emmett, Kenwood and Park, Second Week of Chicago General Release. Prairie, Vista, Alma, Harmony, Willard, Public and Virginia, Third Week of Chicago General Release. Can play in "B" Pre-release.

Senate, 3158 W. Madison St., Chicago, Illinois.

To play in "C" Pre-release. Central Park, Alamo, Marshall Square, Crystal, American and Broadway Strand may play in "C" Pre-release. Douglas, Vision, Byrd, West End, Hub, Crawford, Grand (North Ave.) White Palace, Wilson, Oakley and Illington, First Week of Chicago General Release. Kedzie and Kedzie Annex, Second Week of Chicago General Release. To play in "B" Pre-release, provided prices are adjusted.

State, 5816 W. Madison St., Chicago, Ill.

To play in "C" Pre-release. Berwyn, Manor, Montclare, LaMar may play in "C" Pre-release. Forest Park, Oakwyn, Lake, Annetta, Ritz, Iris, Roxy, Byrd, West End, and Symphony, First Week of Chicago General Release. Southern, Town, Ambassador, Park, Plaisance, Hawthorne, Austin, Avenue, and Savoy, Second Week of Chicago General Release. New Home, Third Week of Chicago Gen. Rel.

Terminal, 3315 Lawrence Ave., Chicago, Illinois.

To play in "C" Pre-release. Gateway may play in "C" Pre-release. Rivoli, Davis, Admiral, Drake, Bertha and Commodore, First Week of Chicago General Release. New Albany, Home, Revue and Metro, Second Week of Chicago General Release.

Tower, 63rd & Blackstone Ave., Chicago, Illinois.

To play in "B" Pre-release. Lexington, Jackson Park, Frolic, Hamilton, Hyde Park and Harper may play in First Week of Chicago General Release. Plaisance, Jefferson, Anne, Vernon, Park Manor and Kimbark, Second Week of Chicago General Release. Langley and Prairie, Third Week of Chicago General Release. Drexel or Midway, but not both, may play in First Week of Chicago General Release. Can play in "A" Pre-release provided prices are adjusted.

Alba, Kedzie & Lawrence Ave., Chicago, Illinois.

To play in First Week of Chicago General Release Metro may play in Second Week of Chicago General Release.

Covent Garden, 2653 Clark St., Chicago, Illinois.

Clear Photoplays to play in "C" Pre-release. Lane Court, Biograph, Mode, Music Box and Vic may play in First Week of Chicago General Release. Hollywood, Lakeshore, Claremont, Lincoln-Hipp and Plaza, Second Week of Chicago General Release. New Parkway and Ideal Third Week of Chicago General Release.

The clearance stated above applies to all features and shorts, with the exception of To Mary With Love and Road to Glory, it being definitely understood that To Mary With Love will be released to "C" Houses, week of October 18th and week of October 25th and Road to Glory week of October 25th and November 1st—General Release on these two subjects to be as follows:

To Mary With Love
First Week Houses—November 1st.
Second Week Houses—November 8th.
Third Week Houses—November 15th.

Road to Glory
First Week Houses—November 8th.
Second Week Houses—November 15th.
Third Week Houses—November 22nd.

This arrangement applies to the two particular pictures only—To Mary With Love and Road to Glory, and has no effect on the clearance of any other photoplay of this contract.

This 3rd day of September, 1936.

Twentieth Century-Fox Film Corporation,
By C. W. Eckhardt,
Branch Manager

Balaban & Katz Corporation,
Norshore Theatre Account,
45 W. Randolph St. Theatre Co.,
Randolph Operating Company,
Oriental Theatre Company,
Theatre Amusement Company,
Lubliner & Trinz Theatres, Inc.,
Island Amusement Co.,
By .....

3078 The following is Film License Agreement between Twentieth Century Fox Film Corporation and Balaban & Katz Corporation dated July 14, 1939, with license fee and clearance agreements made a part of same, from Pl. Ex. 60:

(Filed Oct. 11, 1944, Roy H. Johnson, clerk).

3079 Twentieth Century-Fox Film Corporation

Feature Productions

(Continued from reverse side)

Executive Offices
444 West 56th St.
New York, N. Y.
Branch Office Copy.

Twenty-First: The following Schedule and all of the written and printed parts thereof are a part of this license.

Exchange Chicago, Date July 14, 1939, Salesman Office.

Schedule of Exhibition Contract.

Theatre	Exhibitor	Location of Theatre
As Listed Below	Balaban & Katz Corporation & Corporations as listed on attached	Chicago, Ill. Evanton, Ill. Berwyn, Ill. La Grange, Ill. Downers Grove, Ill.

Group K-7

There are licensed for exhibition hereunder all of the sound photoplays of feature length, not to exceed fifty-two (52), and not less than forty-two (42), including a maximum of four (4) photoplays produced in England by Distributor or its wholly owned subsidiary, which shall be generally released by the Distributor for distribution in motion picture theatres of the United States during the year commencing August 1, 1939 and ending July 31, 1940. The "road showing," "tryout," "preview" or "pre-release" of any photoplay during the said year shall not be deemed a general release of said photoplay.

For the license to exhibit each of said photoplays, the Exhibitor shall pay to the Distributor the following: —

Consecutive Days Run	Minimum Guaranteed License Fee Per Photoplay	Distributor's Share of Gross Receipts Per Photoplay	Gross Receipts Per Photoplay In Excess of Which Distributor Shares
A	Pictures to be designated by Distributor.		
B	Pictures to be designated by Distributor.		
C	Pictures to be designated by Distributor.		
D	Pictures to be designated by Distributor.		

Designation of Photoplays for Group Classification to be Made by the Distributor.

This licensee for exhibition is for the number of Twentieth Century-Fox Feature Photoplays shown on the attached schedule for each of the following forty-four (44) theatres:

Chicago Chicago, Ill.
Roosevelt Chicago, Ill.
United Artists Chicago, Ill.
Apollo Chicago, Ill.
Garrick Chicago, Ill.
Uptown Chicago, Ill.
Riviera Chicago, Ill.
Granada Chicago, Ill.
Varsity Evanston, Ill.
Norshore Chicago, Ill.
Coronet Evanston, Ill.
Century Chicago, Ill.
Pantheon Chicago, Ill.
Nortown Chicago, Ill.
Belmont Chicago, Ill.
Covent Chicago, Ill.
Lakeside Chicago, Ill.
Valencia Evanston, Ill.
Marbro Chicago, Ill.
Paradise Chicago, Ill.
Senate Chicago, Ill.
State Chicago, Ill.
Manor Chicago, Ill.
Central Park Chicago, Ill.

Berwyn Berwyn, Ill.
La Grange La Grange, Ill.
Tivoli Downers Grove, Ill.
Park La Grange, Ill.
Iris Chicago, Ill.
Tivoli Chicago, Ill.
Southtown Chicago, Ill.
Tower Chicago, Ill.
Regal Chicago, Ill.
Maryland Chicago, Ill.
Harding Chicago, Ill.
Congress Chicago, Ill.
Gateway Chicago, Ill.
Luna Chicago, Ill.
Terminal Chicago, Ill.
Belpark Chicago, Ill.
Will Rogers Chicago, Ill.
Crystal Chicago, Ill.
Biltmore Chicago, Ill.
Alba Chicago, Ill.

The attached schedule showing the number of photoplays committed to each theatre with the number of days and rental for each photoplay becomes a part of this contract, and is for season's product known as K-7, released to motion picture theatres in the United States, year commencing August 1, 1939, and ending July 31, 1940.

Number of photoplays offered Number of photoplays licensed

It is agreed that the license fees herein specified apply to each respective photoplay licensed hereunder acording to the classification thereof by the Distributor, as above provided, and such license fees are not average license fees, regardless of the number of such photoplays that may be released by the Distributor during the year commencing August 1, 1939 and ending July 31, 1940.

It is agreed that in case any photoplay excluded under Exhibitor's "Option to exclude if group licensed" shall have been designated by Distributor to play on percentage terms specified under items A, B, or C in the Schedule hereof, then upon its exclusion such designation shall be deemed to be thereby rescinded and Distributor may designate a different photoplay to play on such specified percentage terms, it being the intent of the parties hereto that

Exhibitor shall exhibit hereunder upon the respective percentage terms set forth in said Schedule the number of photoplays specified in said items A, B, and C.

It is further agreed that said option to exclude shall apply only in respect of the photoplays covered by this license agreement.

Of the photoplays hereby licensed the respective number set forth below shall be exhibited on the days specified below:

photoplays as selected by Distributor on

photoplays as selected by Distributor on

The Exhibitor during the whole of the licensed exhibition period of each of the photoplays exhibited hereunder agrees to and shall charge for admission per person to said theatre the following prices:

Evenings: Adults, Orchestra Balcony
Children, Orchestra Balcony

Matinees: Adults, Orchestra Balcony
Children, Orchestra Balcony

For Admission—see General Schedule of Clearance & Admission.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the photoplay then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such photoplay shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the photoplays thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each photoplay thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such photoplay the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees

to exhibit each such photoplay after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof; if Distributor does not elect to terminate the license of the photoplay then being exhibited, as provided in Clause (a) of this paragraph, the Exhibitor shall account for all admissions to said theatre during the exhibition of such photoplay on the basis of the admission prices hereinabove stipulated.

Exhibition Arrangement.

Clearance—Run See General Schedule of Clearance Dated July 14, 1939.

The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked date of exhibition without securing express written permission hereunder.

If, with respect to any photoplay licensed hereunder, the date or dates of exhibition selected, designated or otherwise agreed upon shall be a number of days less than the maximum number specified in the Schedule hereof, then the license hereby granted for such photoplay shall be automatically limited to the number of days or dates of exhibition so selected, designated or otherwise agreed upon, regardless of the number of days specified in said Schedule.

The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories:

The Exhibitor agrees to run photoplays as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as "A Twentieth Century-Fox Production." In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Short Subject Productions

For the license to exhibit each of said photoplays, the exhibitor shall pay to the distributor the following:

Productions	Group K-7	Consecutive Days Run Per Photoplay	Guaranteed License Fee Per Photoplay Black & White	Color
	1-Reel Subjects.			
	One-Reel short subjects contract for season 1939-40, K-7, covered by separate contract bearing this date—July 14, 1939.			

Distributor agrees to release a minimum of 52 one-reel pictures, and in the event the Exhibitor contracts hereunder for more than such minimum number of one-reel subjects, Distributor will be obligated to deliver to the Exhibitor only such pictures in addition to such minimum number that it actually releases.

Exhibitor agrees to play the Short Subjects licensed hereunder as available, commencing ..... and to pay the total license fee of $ ..... in ..... consecutive weekly installments of $ ..... each week starting ....., and a further payment of $ ..... for the last week.

Optional Arbitration Clause—Article Twentieth hereof is optional with the parties hereto. If it is desired to make such Clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Article Twentieth hereof, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

.....

Representative of the Distributor duly authorized to agree to Article Twentieth.

.....

Exhibitor.

In Witness Whereof, the parties hereto have duly executed these presents.
this 14th day of July, 1939. Exhibitor Balaban & Katz Corporation & Corporation as listed on attached.

By A. J. Kaufman,
—Officer
(strike out one)

Twentieth Century-Fox Film Corporation,
By .....

3080 License Agreement

Agreement of license under copyright made in one or more counterparts between Twentieth Century-Fox Film Corporation, a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor, (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as follows:

License—First: The Distributor grants the Exhibitor and the Exhibitor accepts a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each of such motion pictures a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Notwithstanding the number of days of exhibition specified for each motion picture in the Schedule, the license hereby granted to exhibit each such motion picture shall automatically be limited to, and shall not include any right of exhibition at any time or by any means other than respectively: (a) the date or dates either expressly specified herein or selected pursuant to paragraph Sixth hereof and confirmed in writing by the Distributor; and (b) the print of such motion picture designated and furnished by the Distributor for such date or dates.

Terms and Warranty—Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in Clause Fifteenth and Nineteenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver—(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fifteenth hereof, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such

motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part, upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment—Third: Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor at its main office in New York City. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings—(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representa-

tive of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceeding or litigation in respect to this license.

Liquidated Damages—Percentage Bookings—(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, a sum equal to such percentage of the average daily gross receipts of such theatre on each day any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety (90) day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such motion picture should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full

number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five per cent (65%) of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture provided, however, that in any event the Distributor shall be entitled to receive an amount equal to the fixed sums specified as the minimum rental therefor. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints—Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show," "try-out," "preview," or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and/or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture

and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such print, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange or if directed by the Distributor, to ship such positive print elsewhere than to the Distributor's exchange transportation charges collect. It

is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints—Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels," upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be

deemed to have been so damaged or destroyed by the E
hibitor unless the latter, immediately after the first publ
exhibition thereof shall have telegraphed the Distributor
exchange that such print was received by the Exhibito
in a damaged or partially destroyed condition, and settin
forth fully the nature of such damage and the amount o
footage so damaged or destroyed.

Selection of Play Dates—Sixth: Unless otherwise agree
upon or unless definitely specified or otherwise provide
for in the Schedule, the exhibition date or dates of eac
of said motion pictures shall be determined as follows:

1. Subject to prior runs and or clearance granted o
hereafter granted by the Distributor to other exhibitor
and within a reasonable time after a print or prints o
any of said motion pictures are received at the exchang
of the Distributor out of which the exhibitor is serve
and provided the Exhibitor is not in default hereunde
the Distributor shall mail to the Exhibitor a notice i
writing of the date when each such motion picture will b
available for exhibition by the Exhibitor (which date i
hereinafter referred to as the "available date"). Suc
notice shall be mailed to the Exhibitor at least fifteen (15
days before the available date therein specified.

2. Within fourteen (14) days after the mailing of suc
notice, the Exhibitor shall select an exhibition date o
dates not theretofore assigned to another exhibitor o
other exhibitors, within the period commencing upon th
available date and ending thirty (30) days thereafter an
give to the Distributor written notice of the date or date
so selected.

3. Upon the failure of the Exhibitor to so select suc
date or dates the Distributor shall designate such date o
dates by mailing written notice thereof to the Exhibitor

Clearance and Run—Seventh: The Distributor agree
not to exhibit or grant a license to exhibit any of sai
motion pictures for exhibition in conflict with the "run"
or prior to the expiration of the "clearance period" i
any in the Schedule specified at any theatre therein name
or within the territorial limits therein specified. Suc
period of clearance as to each of said motion pictures sha
be computed from the last date of the exhibition thereo
licensed heerunder. If clearance is granted against
named theatre or theatres indicating that it is the inte
tion of the Distributor to grant such clearance against a

theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such protection shall include any theatre in such vicinity thereafter erected or opened.

Reissues, Foreign Pictures and Advertising Matter—Eighth: The Distributor warrants that none of said motion pictures are reissues of old negatives, old negatives retitled or foreign produced by a foreign producer, excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Prior to First Run—Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be road shown by the Distributor and not excepted and excluded from this license, until after the completion of such road showing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor, unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance by Distributor—Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof, if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing—Eleventh: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served, provided such change or modification does not change or modify the run, and or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

Assignment on Sale of Theatre—Twelfth: This license shall not be assigned by either party without the written consent of the other, provided that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, and provided the said theatre has not been destroyed by fire, the elements or other casualty, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release

from liability is consented to by the Distributor in writing, and in the event the Exhibitor is not released from liability then the Exhibitor and the assignee shall be jointly liable for the further performance of the said license agreement.

Taxes—Thirteenth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibiter to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance—Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their control, then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given. It is further agreed that if such disability to perform on the part of the Exhibitor continues for a period of four months (illegible) to that effect, any time after the expiration of said four months' period.

(illegible) or feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder, the Exhibitor shall have the right to exclude from this license not to exceed ten (10%) percent of the total number of feature motion pictures so licensed hereunder provided the Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said motion pictures within ten (10) days after the mailing by the Distributor of notice of availability thereof. Upon the exclusion of each feature motion picture the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

First Run Exhibitions—Sixteenth: (a) If the Exhib-

itor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (c) of this Clause provided.

Second Run Exhibitions—(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to

such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions—(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause, the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs—(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance—(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture

should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

Remedies—Seventeenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

It is agreed, that in the event of the failure or refusal of Exhibitor to exhibit or pay the license fees of any one or more of the photoplays covered by this contract, Distributor may, at its option, declare such failure or refusal a breach of the entire contract, entitling Distributor to recover from Exhibitor as damages therefor, the amount payable as license fees in respect of all photoplays not theretofore exhibited and/or paid for, pusuant to the provisions of this contract.

Cutting or Alteration of Prints—Eighteenth: The Exhibitor shall exhibit each print in its entirety and shall

not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor, however, may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Roadshows—Nineteenth: (a) The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion pictures in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition except-

ing those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clause Fifteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid.

when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Arbitration—Twentieth: Exhibitor and Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration as follows (hereby expressly waiving the oath of the arbitrators):

Either the Exhibitor or Distributor shall appoint an arbitrator and give written notice of such appointment to the other party. Within five (5) days after the receipt of such notice of appointment, the other party shall appoint a second arbitrator and give written notice of such appointment to the other arbitrator and to the other party. The two arbitrators so selected shall within three (3) business days thereafter select a third arbitrator, and the three (3) arbitrators shall thereupon meet and determine the matter. The hearing of any such controversy shall be in the city wherein is situated the exchange of Distributor from which Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. The arbitrators appointed hereunder shall proceed forthwith to hear and determine the matter or matters referred to them for determination and the evidence submitted to them, and may require the parties to appear and produce such accounts, documents and witnesses as the arbitrators may require. The arbitrators shall have power to determine such dispute or controversy to make findings of fact in respect thereof, and to direct specific performance of a contract, and or to determine that the same has been breached in whole or in part, and or that damages on such account shall be paid. The decision or award of a majority of the three (3) arbitrators herein provided for shall be final and binding and conclusive upon the parties hereto. No person shall hear or determine any controversy in which he has an interest direct or indirect, and any person having such interest shall be disqualified to act as an arbitrator. If either party fails or refuses to name the arbitrator to be appointed by such party as herein provided, or if any arbitrator so named shall fail or refuse

to act, or be unable or unqualified to serve and another arbitrator qualified and then available to act is not then appointed, another arbitrator may be appointed by the other party hereto. If the arbitrators appointed by or for the respective parties shall fail to agree upon such third arbitrator, such third arbitrator shall be appointed by the President of the American Arbitration Society, who shall be requested to make the selection. The parties hereto further agree to abide by and forthwi comply with any decision and/or award of the arbitrators or a majority of them, and consent that any such decision and/or award shall be enforceable in or by any court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

Each of the parties hereto, without notice to the other, may apply to any court having jurisdiction to make this agreement to arbitrate a rule or order of such court.

In the event either party neglects or refuses to appoint its arbitrators within five days after the mailing of a notice by the other party requesting such arbitration and appointing its arbitrators, the party requesting such arbitration may deem such action by the other party a refusal to arbitrate such claims and controversies sought to be arbitrated, and in such event may abandon all further arbitration of such claim or controversy sought to be arbitrated, and may then, without further notice, pursue any further remedy, legal, equitable or otherwise, to which said party may be entitled pursuant to this contract.

PLAINTIFF'S EXHIBIT 44

TWENTIETH CENTURY-FOX FILM CORPORATION

Chicago, Ill.
July 14, 1939

BALABAN & KATZ CIRCUIT—BLANKET CONTRACT—K-7—SEASON 1939-40

TWENTIETH CENTURY-FOX FEATURE PHOTOPLAYS

Theatre Address Ownership	Group	No. of Photoplays	Days	Terms Per Photoplay
CHICAGO 185 N. State St. Chicago, Ill. Balaban & Katz Corp.	A	8 First Choice	7 Note:	$5,000.00 (see below) Guarantee in event distributor does not receive an overage the terms are to be $5,150.00 instead of $5,000.00 guarantee. $5,150.00 Flat. Guarantee is against a sharing arrangement. Such Guarantee is distributor's share up to a point where the house has received house expense, guarantee film rental, plus 50% of film rental, and over and above this figure, Distributor is to receive 50% of the receipts from that point to the completion of the week's engagement. HOLD-OVER STIPULATION:—In the event the gross receipts of the original or any subsequent week are an accumulated total of $22,000.00 for Friday, Saturday and Sunday, the engagement is to be automatically extended an additional week on the same contract terms as the original engagement. The playing of additional weeks is not to be charged against the picture commitments.
	C	4 Third Choice	7	

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Plaintiff's Exhibit No. 44

ROOSEVELT 410 N. State St. Chicago, Ill. Balaban & Katz Corp.	4th	4 Second Choice	7	25% to Split (see below). Split figure is to be determined for each individual picture, arrived at on the basis of house expense, film rental paid, 50% of film rental paid as profit. Distributor to share fifty-fifty of gross receipts in excess of split figure. Second and subsequent week terms to be agreed upon.
UNITED ARTISTS 45 W. Randolph St. Chicago, Ill. 45 West Randolph St. Theatre Corp.				
APOLLO Randolph & Clark Sts., Chicago, Ill. Balaban & Katz Corp.	D	11 Fourth Choice	7	5 @ 1,000.00 Vs. 25% to Split (see below). 6 @ 1,000.00 Vs. 20% to Split (see below). To an accumulated expense and receipts over the 11 pictures as a total to a point where house has 50% of film rental as profit, and from that point forward all receipts in excess of split figure on a basis of fifty-fifty. Terms for second and subsequent weeks to be mutually agreed upon.
GARRICK 61 W. Randolph St. Chicago, Ill. Balaban & Katz Corp.	E	6 Fifth Choice	7	20% of Gross. Terms for second and subsequent weeks to be mutually agreed upon. Apollo and Garrick in GRPUP, D and "E" may select any Photoplay played the Chicago Theatre or Rialto picture as a part of this commitment.

Cont'd on next page

Plaintiff's Exhibit No. 11

3082 PLAINTIFF'S EXHIBIT 89

TWENTIETH CENTURY-FOX FILM CORPORATION Chicago, Ill.
July 14, 1939

BALABAN & KATZ CIRCUIT

Theatre Address Ownership	Group	No. of Photoplays	Days	Terms Per Photoplay
UPTOWN 4814 Broadway Chicago, Ill. Balaban & Katz Corp.	A	8	7	$2,475.00
	B	6	7	2,100.00
	C	5	7	1,550.00
	D	3	7	1,225.00
RIVIERA 4702 Broadway Chicago, Ill. Balaban & Katz Corp.	A	5	7	942.50
	B	9	7	542.50
GRANADA 6427 Sheridan Road Chicago, Ill. Balaban & Katz Corp.	A	8	7	1,255.00
	B	6	7	1,070.00
	C	8	7	535.00
VARSITY Evanston, Ill. Balaban & Katz Corp.	A	6	7	935.00
	B	11	7	560.00
NORSHORE 1725 Howard St. Chicago, Ill. Balaban & Katz Corp. Norshore Theatre Account.	A	8	1/5	410.00
	B	19	1/4	242.50
	C	10	1/4	131.25
CORONET Evanston, Ill. Balaban & Katz Corp.	A	8	1/3	62.50
	B	16	1/2	40.00
	C	16	1/2	27.50
	D	12	1/2	20.00
CENTURY 2820 N. Clark St. Chicago, Ill. Theatre Amusement Co.	A	8	1/5	380.00
	B	19	1/4	217.50
PANTHEON 4642 Sheridan Road Chicago, Ill. Balaban & Katz Corp.	A	8	1/5	320.00
	B	19	1/4	227.50
	C	10	1/4	131.25
NORTOWN 6320 N. Western Ave. Chicago, Ill. Balaban & Katz Corp.	A	8	1/5	320.00
	B	20	1/4	217.50
	C	9	1/4	131.25
BELMONT 1618 Belmont Ave. Chicago, Ill. Theatre Amusement Co.	A	8	1/5	342.50
	B	20	1/4	262.25
	C	9	1/4	104.50

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3083 PLAINTIFF'S EXHIBIT 90

TWENTIETH CENTURY-FOX FILM CORPORATION Chicago, Ill
July 14, 1939

BALABAN & KATZ CIRCUIT

Theatre Address Ownership	Group	No. of Photoplays	Days	Terms Per Photoplay
COVENT 2653 N. Clark St. Chicago, Ill. Theatre Amusement Co.	Spot-Booking		2/3	$ 71.25
LAKESIDE 4730 Sheridan Road Chicago, Ill. Theatre Amusement Co.	A	30	Clear 1/2 Repeat 1/2	55.00 40.00
	It is understood that the commitment of this theatre is to total $2,195.00			
VALENCIA Evanston, Ill. Balaban & Katz Corp.	A	8	2/3	117.50
	B	16	2/3	90.00
	C	16	2/3	55.00
	D	32	2/3	25.00
MARBRO 4124 W. Madison St. Chicago, Ill. Balaban & Katz Corp.	A	8	7	2,462.50
	B	6	7	2,087.50
	C	3	7	1,587.50
	D	6	7	1,043.75
PARADISE 231 N. Crawford Ave. Chicago, Ill. Balaban & Katz Corp.	A	8	3/4	611.25
	B	4	3/4	521.25
	C	10	3/4	260.62
SENATE 3158 W. Madison St. Chicago, Ill. Balaban & Katz Corp.	A	8	1/5	315.00
	B	19	1/4	192.50
	C	10	1/4	106.25
STATE 5816 W. Madison St. Chicago, Ill. Theatre Amusement Co.	A	8	1/5	315.00
	B	19	1/4	217.50
	C	10	1/4	106.25
MANOR 5609 W. North Ave. Chicago, Ill. Balaban & Katz Corp.	A	8	1/5	204.00
	B	19	1/4	112.25
	C	10	1/4	83.75
CENTRAL PARK 3535 W. Roosevelt Road Chicago, Ill. Balaban & Katz Corp.	A	8	1/5	285.00
	B	19	1/4	192.50
	C	5	1/4	106.25
BERWYN Berwyn, Ill. Theatre Amusement Co.	A	8	1/5	390.00
	B	19	1/4	267.50
	C	10	1/4	131.25

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3084 PLAINTIFF'S EXHIBIT 91

TWENTIETH CENTURY-FOX FILM CORPORATION

BALABAN & KATZ CIRCUIT

Chicago, Ill.
July 14, 1938

Theatre Address Ownership	Group	No. of Photoplays	Days	Terms Per Photoplay
LA GRANGE La Grange, Ill. Theatre Amusement Co.	A	8	1/5	$ 154.00
	B	19	1/4	112.25
	C	10	1/4	54.25
TIVOLI Downers Grove, Ill. Lund Theatre Corp., Inc.	A	8	1/5	162.50
	B	19	1/4	102.50
	C	10	1/4	77.50
PARK La Grange, Ill. Balaban & Katz Corp.	A	Spot-Booking	1/2	22.50
	B		1/2	17.50
	C		1/2	12.50
IRIS 5743 W. Chicago, Ave. Chicago, Ill. Iris Amusement Corp.	A	4 Clear Symphony	1/4	77.50
	B	7 " "	1/3	77.50
	C	10 " "	1/3	53.05
	D	9 " "	1/3	27.50
		12 Repeat "	1/3	37.50
		Groups "A", "B", "C" and "D" to be even split with Symphony. Balance of 12 to be repeat on Symphony.		
TIVOLI 6335 Cottage Grove Ave. Chicago, Ill. Balaban & Katz Corp.	A	8	7	2,180.00
	B	7	7	1,850.00
	C	6	7	1,300.00
	D	4	7	800.00
SOUTHTOWN 610 W. 63rd St. Chicago, Ill. Balaban & Katz Corp.	A	8	7	1,227.50
	B	9	7	1,042.50
	C	5	7	521.25
TOWER 63rd and Blackstone Ave. Chicago, Ill. Balaban & Katz Corp.	A	8	1/5	385.00
	B	20	1/4	271.00
	C	9	1/4	132.50
REGAL 4719 S. Parkway Chicago, Ill. Theatre Amusement Co.	A	8	1/5	287.50
	B	19	1/4	187.25
	C	10	1/4	133.75
	D	5	1/4	108.75
MARYLAND 860 E. 63rd St. Chicago, Ill. Balaban & Katz Corp.	A	8	1/5	249.00
	B	24	1/4	174.25
	C	10	1/4	79.50
HARDING 2714 Milwaukee Ave. Chicago, Ill. Theatre Amusement Co.	A	8	7	1,227.50
	B	6	7	1,042.50
	C	8	7	521.25

Cont. on next page

3085 PLAINTIFF'S EXHIBIT 92

TWENTIETH CENTURY-FOX FILM CORPORTION Chicago, Ill.
July 14, 1939

BALABAN & KATZ CIRCUIT

Theatre Address Ownership	Group	No. of Photoplays	Days	Terms Per Photoplay
CONGRESS	A	8	1/5	$ 320.00
2138 Milwaukee Ave.	B	19	1/4	217.50
Chicago, Ill.	C	10	1/4	131.25
Theatre Amusement Co.				
GATEWAY	A	8	1/5	410.00
5216 Lawrence Ave.	B	19	1/4	317.50
Chicago, Ill.	C	10	1/4	181.25
Balaban & Katz Corp.				
LUNA	A	8	1/3	62.50
Belmont at Keating	B	16	1/2	40.00
Chicago, Ill.	C	16	1/2	27.50
Theatre Amusement Co.	D	12	1/2	20.00
TERMINAL	A	8	1/5	315.00
3315 Lawrence Ave.	B	19	1/4	205.00
Chicago, Ill.	C	10	1/4	131.25
Balaban & Katz Corp.				
BELPARK	A	8	1/5	245.50
3231 N. Cicero Ave.	B	20	1/4	132.00
Chicago, Ill.	C	9	1/4	78.50
Balaban & Katz Corp.				
WILL ROGERS	A	8	1/5	285.00
5635 W. Belmont Ave.	B	19	1/4	177.50
Chicago, Ill.	C	10	1/4	93.75
Balaban & Katz Corp.				
CRYSTAL	A	8	1/5	239.00
2701 W. North Ave.	B	14	1/4	162.25
Chicago, Ill.	C	5	1/4	108.75
Theatre Amusement Co.	D	10	1/4	54.50
BILTMORE	A	8	1/5	159.00
2010 Division St.	B	20	1/4	106.75
Chicago, Ill.	C	5	1/4	54.50
Balaban & Katz Corp.	D	5	1/4	39.25
ALBA	A	8	1/3	62.50
Kedzie and Lawrence	B	19	1/2	37.50
Chicago, Ill.	C	10	1/2	27.50
Theatre Amusement Co.				

BALABAN & KATZ CORPORATION
45 WEST RANDOLPH STREET THEATRE CORPORATION
THEATRE AMUSEMENT COMPANY
BALABAN & KATZ NORSHORE THEATRE ACCOUNT
IRIS AMUSEMENT CORPORATION
LUND THEATRE CORPORATION, INC.
By A. J. KAUFMAN, Agt.

TWENTIETH CENTURY-FOX FILM CORPORATION
By _____

A part of contracts signed and dated July 14, 1939.

3086 Twentieth Century-Fox Film Corporation

Chicago, Ill.
July 14, 1939

In conjunction with contracts dated July 14, 1939, between Twentieth Century-Fox Film Corporation and Balaban & Katz Corporation, the following clearance and admission charge shall prevail concerning licensing of copyrighted motion pictures for Season 1939-40.

1. It is understood that the provisions hereof relate only to the Photoplays actually licensed for exhibition by the Distributor. The Distributor has no interest in, nor does it desire to exercise any control over any Photoplays not leased by it, nor in the Clearance or Rental conditions requested or allowed by other Distributors or the owners of any Theatres as long as the provisions of this Schedule are observed in respect of Photoplays leased by the Distributor.

2. No attempt is made by the Exhibitor to classify particular theatres as First Run or Subsequent Run Theatres, it being understood that the theatre in which a Photoplay is leased for a First Run exhibition in the particular locality in which such theatre is located, shall be deemed to be the First Run theatre as to such Photoplay in such locality and entitled to the Clearance and protection provided in this Schedule for any First Run theatre in such locality.

3. For the purpose of more conveniently designating clearance with respect to the exhibition of Balaban & Katz theatres, pictures licensed, the playing positions or release weeks are designated as follows:

Chicago "A" Pre-Release:

These theatres to play in the Fourth, Fifth or Sixth Weeks after the last day of First Run exhibition downtown. Minimum Adult Admission per person 30¢ Matinee until 6:30 P. M.; after 6:30 P. M. 50¢.

Chicago "B" Pre-Release:

These theatres to play in the Seventh or Eight Weeks after the last day of First Run exhibition downtown. Minimum Adult Admission per person 25¢ Matinee until 6:30 P. M.; after 6:30 P. M. 40¢.

Chicago "C" Pre-Release:

These theatres to play in the Ninth Week after the last day of First Run exhibition downtown. Minimum Adult Admission per person 20¢ Matinee until 6:30 P. M.; after 6:30 P. M. 30¢.

First Week of Chicago General Release:

These theatres to play in the tenth week after the last day of First Run exhibition downtown. Minimum Adult admission per person 15¢ Matinee until 6:30 P. M.; after 6:30 P. M. 25¢.

Second Week of Chicago General Release:

These theatres to play in the Eleventh week after the last day of First Run exhibition downtown. Minimum Adult Admission per person 15¢ Matinee until 6:30 P. M.; after 6:30 P. M. 20¢.

Third Week of Chicago General Release:

These theatres to play in the Twelfth Week after the last day of First Run exhibition downtown. Minimum Adult Admission per person 15¢ Matinee until 6:30 P. M.; after 6:30 P. M. 20¢.

Minimum Admission for Children at all times to be not less than 10¢ per person.

3087 4. The playing positions of Balaban & Katz theatres, according to Schedule stated in paragraph 3 and the theatres as to which clearance are contracted for and the clearance agreed upon are stated as follows:

Chicago
United Artists
Roosevelt
Apollo
Garrick

These theatres to play First Run downtown Chicago, Ill. No theatre in the State of Illinois, north of a latitudinal line running parallel to Springfield, Ill. (excluding Springfield, Quincy, Galena, Decatur, Danville, Champaign, Peoria and adjacent towns that these seven (7) towns may have clearance over), or in LaPorte, Starke, Pulaski, Porter, Jasper, Lake and Newton Counties in the State of Indiana, to play prior to or during the First Run exhibition of these theatres. Tivoli, Southtown, Avalon, Capitol, Up-

town, Riviera, Granada, Marbro, Paradise, Chicago, Ill., and Varsity, Evanston, Ill., not to play prior to "A" Pre-release Weeks. McVickers, Chicago, Ill., not to play prior to third week of "A" Pre-release. Rialto, Chicago, Ill., not to play prior to "B" Pre-release weeks. Pastime, Woods, Monroe, Clark and LaSalle, Chicago, Ill., not to play prior to "C" Pre-release week. Casino Theatre, Chicago, Ill., to play in First Week of General Release.

Uptown
Riviera
Granada

These theatres to play in "A" Pre-release Weeks. No theatre in the north or northern part of Cook County, outside the city limits of Chicago (except Varsity, Evanston, Ill.) to play prior to "B" Pre-release Weeks.

Not to Play Prior to Same Weeks:
Varsity

Not to Play Prior to "B" Weeks:
Norshore
Century
Pantheon
Nortown
Belmont
Sheridan
Esquire

Varsity

This theatre to play in "A" Pre-release Weeks.

Not to Play Prior to "B" Weeks:
Delago
Alcyon (Highland Park)
Deerpath (Lake Forest)

Not to Play Prior to "C" Week:
Howard
Wilmette

Not to Play Prior to First Week:
Valencia
Stadium

Not to Play Prior to Second Week:
Coronet

Norshore

This theatre to play in "B" Pre-release Weeks.

Not to Play Prior to "B" Weeks:
- Century
- Pantheon
- Nortown
- Belmont
- Sheridan
- Esquire

Not to Play Prior to "C" Week:
- Howard
- Devon

Not to Play Prior to First Week:
- Valencia
- Ridge

Not to Play Prior to Second Week:
- Adelphi
- Four Hundred

Coronet

This theatre to play in Second Week of Chicago General Release.

3088 Century

This theatre to play in "B" pre-release weeks.

Not to Play Prior to "B" Weeks
- Pantheon
- Nortown
- Belmont
- Sheridan
- Esquire
- Norshore

Not to Play Prior to "C" Week
- Buckingham
- Vogue
- Covent
- Windsor

Not to Play Prior to First Week
- Vic-Mode
- Music Box
- Biograph
- Lane Court

Not to Play Prior to Second Week

Plaza
Lincoln-Hipp.
Lakeshore
Easterly
Claremont
Hollywood
Ideal
City

Not to Play Prior to Third Week

Parkway

Pantheon

This theatre to play in "B" pre-release weeks.

Not to Play Prior to "B" Weeks

Nortown
Belmont
Sheridan
Norshore
Century
Esquire

Not to Play Prior to First Week

DeLuxe-Mode
Calo-Davis
Lakeside
Bertha-Rosewood
Music Box
Bryn Mawr

Not to Play Prior to Second Week

Argmore

Nortown

This theatre to play in "B" pre-release weeks.

Not to Play Prior to "B" Weeks

Belmont
Sheridan
Norshore
Century
Pantheon
Esquire

Not to Play Prior to "C" Week

Devon
Terminal

Not to Play Prior to First Week
Metro-Cine
Alba-Davis
Ridge-Calo
Bryn Mawr
Not to Play Prior to Second Week
Adelphi
Four Hundred

Belmont

This theatre to play in "B" pre-release weeks.

Not to Play Prior to "B" Weeks
Sheridan
Norshore
Century
Pantheon
Nortown
Esquire
Not to Play Prior to "C" Week
Covent
North Center
Buckingham
Not to Play Prior to First Week
Bertha-Davis
Biograph
Rosewood
Julian-Vic
but not both
Not to Play Prior to Second Week
Bugg
Lincoln-Hipp.
Easterly
Hollywood
City

Covent

This theatre to play Photoplays clear of Century in "C" pre-release week. Repeat on Century to play first week.

Not to Play Prior to First Week
Music Box
Lane Court
Mode-Vic
Biograph

Not to Play Prior to Second Week
Lincoln-Hipp.
Hollywood
Claremont
Lakeshore
Plaza

Not to Play Prior to Third Week
Ideal
New Parkway

3089 Lakeside

This theatre to play in first week of general release.

Not to Play Prior to First Week
DeLuxe
Mode
Bryn Mawr

Not to Play Prior to Second Week
Argmore

Valencia

This theatre to play in first week of Chicago general release.

Not to Play Prior to First Week
Stadium

Not to Play Prior to Second Week
Coronet

Marbro

This theatre to play in "A" pre-release weeks. No theatre on the West Side, Northwest Side, or Southwest Side of Chicago (except Harding and Paradise) or in the northwestern, western or southwestern part of Cook County, Illinois to play prior to "B" pre-release weeks. (Paradise may play in "A" pre-release weeks if "A" admission charged.)

Not to play Prior to "B" Weeks
Senate-Gateway
Congress-Paradise
Lamar, Oak Park
Lido, Maywood
Montclare

Paradise

This theatre to play in "B" pre-release weeks. (My play in "A" pre-release weeks if "A" admission charged.

Not to Play Prior to "B" Weeks
- Senate-Gateway
- Congress
- Lido, Maywood
- Lamar, Oak Park
- Montclare

Not to Play Prior to "C" Week
- State

Not to Play Prior to First Week
- Crawford

Senate

This theatre to play in "B" pre-release weeks.

Not to Play Prior to "B" Weeks
- Congress
- Gateway
- Lamar, Oak Park
- Lido, Maywood
- Paradise
- Montclare

Not to Play Prior to "C" Week
- Central Park
- Alamo-State
- Crystal
- Marshall Sq.
- American
- Broadway Strand

Not to Play Prior to First Week
- Byrd-Douglas
- West End-Hub
- Vision-Oakley
- Crawford
- Grand (North)
- White Palace
- Four Star
- Illington

Not to Play Prior to Second Week
- Kedzie
- Kedzie Annex
- Garfield

State (Madison St.)

This theatre to play in "C" pre-release week.

Not to Play Prior to "C" Week

Lake-Manor
Forest Park
Berwyn

Not to Play Prior to First Week

Annette-Roxy
Oakwyn-Ritz
Iris-West End
Byrd-Symphony

Not to Play Prior to Second Week

Ambassador
Town-Park
Southern
Plaisance
Austin-Savoy
Hawthorne
Avenue

3090 Manor

This theatre to play in "C" pre-release week.

Not to Play Prior to "C" Week

State

Not to Play Prior to First Week

Iris-Elm
Symphony
Will Rogers

Not to Play Prior to Second Week

Austin
Ambassador
Plaisance

Not to Play Prior to Third Week

New Home

Central Park

This theatre to play in "C" pre-release week.

Not to Play Prior to "C" Week

Atlantic
Broadway Strand
Marshall Square

Not to Play Prior to First Week
Joy-Douglas
California
Crawford
Homan
White Palace

Not to Play Prior to Second Week
Lawndale
Lyric-Lindy
Lexington
Gold-Circle
20th Century
Kedzie
Kedzie Annex

Not to Play Prior to Third Week
Harrison
Alex
Road

Berwyn

This theatre to play in "C" pre-release week.

Not to Play Prior to "C" Week
State
LaGrange
Tivoli, Downers Grove, Ill.

Not to Play Prior to First Week
Ritz-Roxy
Oakwyn-Villas
Annette
Palace

Not to Play Prior to Second Week
Hawthorne
Town
Southern

LaGrange

This theatre to play in "C" pre-release week.

Not to Play Prior to "C" Week
State
Berwyn
Tivoli, Downers Grove, Ill.

Not to Play Prior to First Week
Roxy, Berwyn, Ill.
Hinsdale, Ill.

Not to Play Prior to Second Week
Villages of Brookfield, Lyons, Ill.
Park, LaGrange

Not to Play Prior to Third Week
Villages of Western Springs and Riverside, Ill.

Tivoli, Downers Grove
This theatre to play in "C" pre-release week.

Not to Play Prior to "C" Week
LaGrange
Elmhurst
Wheaton

Not to Play Prior to First Week
Hinsdale
Naperville
Glen Ellyn
West Chicago
Lombard

Not to Play Prior to Second Week
Westmont
Bensonville

Not to Play Prior to Third Week
Dickey, Downers Grove, Ill.

Park

This theatre to play in second week of Chicago general release.

Iris

This theatre to play clear pictures on Symphony Theatre in first week of general release. Repeat pictures to play in second week of general release.

Not to Play Prior to Second Week
Ambassador
Park
Plaisance
Symphony (on repeats)
Ohio

3091 Tivoli

This theatre to play in "A" pre-release weeks. No theatre in the south or southwest section of Chicago (except Southtown and Avalon) or in the southern part of Cook County, outside the city limits of Chicago or in Lake County, Indiana (except Gary, Indiana Harbor and Hammond, Ind.) to play prior to "B" re-release weeks. Gary, Indiana Harbor and Hammond, Ind. may play immediately following the last day of exhibition in this theatre except on pictures which play the Southtown; Avalon and Southtown theatres, may play immediately following the last day of exhibition in this theatre.

Not to Play Prior to "B" Week
- Regal
- Piccadilly
- Stratford

Southtown

To play in "A" pre-release if clear on Southside. If repeat on Tivoli, Southtown to play immediately following Tivoli. Avalon may play week and week but not earlier. No theatre in the south or southwest section of Chicago (except Tivoli and Avalon) or in the southern part of Cook County, outside the city limits of Chicago or in Lake County, Indiana (except Capitol and Tower, Chicago, Illinois, Gary, Indiana Harbor and Hammond, Indiana) to play prior to "B" pre-release weeks. Capitol and Tower, Chicago, Illinois, Gary, Indiana Harbor and Hammond, Indiana to play immediately following the last day of exhibition in this theatre.

Not to Play Prior to "B" Weeks
- Regal
- Piccadilly
- Stratford

Not to Play Prior to "C" Week
- Ogden
- Highland
- Cosmo
- Peoples
- Maryland
- Beverly
- Rhodes

Not to Play Prior to First Week
E. A. R.
Englewood
Harvard
Triangle
Regent
Halfield

Tower

This theatre to play in "B" pre-release weeks. (May play in "A" pre-release weeks if "A" admission is charged.

Not to Play Prior to "B" Weeks
Regal
Piccadilly
Stratford

Not to Play Prior to "C" Week
Maryland
Jeffery
Grove

Not to Play Prior to First Week
Jackson Park
Lexington
Hamilton
Frolic-Harper
Hyde Park
Midway or
Ark, but not both

Not to Play Prior to Second Week
Kimbark
Park Manor
Amo
Jefferson
Plaisance

Regal

This theatre to play in "B" pre-release weeks.

Not to Play Prior to "C" Week
Michigan

Not to Play Prior to First Week
Owl

Not to Play Prior to Second Week
Indiana
Apollo
Amo
Emmett
Kenwood
Park

Not to Play Prior to Third Week
N. R. A.
Alma
Harmony
Willard
Public
Virginia
Pix

3092 Maryland

This theatre to play in "C" pre-release week.

Not to Play Prior to "C" Week
Jeffery
Grove

Not to Play Prior to First Week
Jackson Park
Lexington
Hamilton
Frolic-Harper
Hyde Park

Not to Play Prior to Second Week
Park Manor
Amo
Jefferson
Plaisance
Kimbark or
Woodlawn, but not both
Drexel or
Midway, but not both

Not to Play Prior to Third Week
NRA
Langley

Harding

This theatre to play in "A" pre-release weeks following the Marbro Theatre. No theatre in the North or Northwest section of Chicago (except Uptown, Marbro, Riviera,

Granada, Paradise) or in the northern part of Cook County outside the city limits of Chicago, to play prior to or during the same weeks. Clear photoplays may play any "A" Pre-release week.

Not to Play Prior to "B" Weeks
- Congress
- Gateway

Not to Play Prior to First Week
- Logan

Not to Play Prior to Second Week
- Dale
- Nita

Congress

This theatre to play in "B" pre-release weeks. No theatres, (except Harding) in the section bounded on the west by Cicero, on the east by Halsted Street, on the south by Chicago Avenue and on the north by Irving Park Boulevard to play prior to "C" pre-release week.

Not to Play Prior to "B" Weeks
- Gateway

Not to Play Prior "C" Week
- Crown
- Crystal
- Tiffin
- Biltmore

Not to Play Prior to First Week
- Portage Park
- Admiral
- Oakley-Alvin
- Embassy-Milford
- Grand (North)
- Belpark

Not to Play Prior to Second Week
- Revue-Fox
- Rogers-Oak
- Paulina-Banner
- Harmony-Queen
- Avaloe-Rio
- Chopin-Avon
- New Strand
- Royal-Dale
- Armitage

Not to Play Prior to Third Week
Bell
Webster

Gateway
This theatre to play in "B" pre-release week.
Not to Play Prior to "B" Week
Congress
Not to Play Prior to "C" Week
Terminal
Park Ridge, Ill.
Not to Play Prior to First Week
Metro-Irving
Will Rogers
Belpark
Portage Park
Not to Play Prior to Second Week
Revue
Time or
Jeff, but not both

Luna
This theatre to play in second week of general release.

3093 Terminal
This theatre to play in "C" pre-release week.
Not to Play Prior to First Week
Belpark-Rivoli
Will Rogers
Admiral-Drake
Davis
Commodore
Bertha
Not to Play Prior to Second Week
Home-Metro
New Albany
Revue-Alba

Belpark
This theatre to play in first week of general release.
Not to Play Prior to First Week
Will Rogers
Rivoli-Drake

Patio-Embassy
Irving-Milford
Portage Park
Admiral
Cine

Not to Play Prior to Second Week
Luna-Karlov
Revue-Dale

Not to Play Prior to Third Week
New Home

Will Rogers

This theatre to play in the first week of general release.

Not to Play Prior to First Week
Belpark-Patio
Portage Park
Elm

Not to Play Prior to Second Week
Luna-Revue
Karlov

Crystal

This theatre to play in "C" pre-release week.

Not to Play Prior to "C" Week
Biltmore
Crown

Not to Play Prior to First Week
Grand (North)
Oakley-Logan
Alvin-Hub

Not to Play Prior to Second Week
Vision-Avon
Harmony-Rogers
Avaloe-Queen
Oak-Royal
Banner-Armitage
Paulina-Rio
New Strand

Biltmore

This theatre to play in "C" pre-release week.

Not to Play Prior to "C" Week
Crown
Crystal

Not to Play Prior to First Week
Oakley-Hub
Alvin
Grand (North)

Not to Play Prior to Second Week
Vision-Harmony
Oak-Queen
Royal-Chopin
New Strand
Paulina-Banner

Not to Play Prior to Third Week
Bell
Webster

Alba

This theatre to play in second week of general release.

Not to Play Prior to Second Week
Home
New Albany
Revue

Alba to have clearance over Metro.

3094 Balaban & Katz Corporation
45 West Randolph Street Theatre Corporation
Theatre Amusement Company
Balaban & Katz Norshore Theatre Account
Iris Amusement Corporation
Lund Theatre Corporation, Inc.
Northern Amusement Corp.
By: A. J. Kaufman.

Twentieth Century-Fox Film Corporation
By: .....

A Part of Contracts Signed and Dated—July 14, 1939.

3095 PLAINTIFF'S EXHIBIT 69.

Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

3096 Memorandum Made a Part of Agreement Between Paramount Pictures and Balaban & Katz Corporation Signed November 15, 1938, Concerning Licensing of Copyrighted Motion Pictures in Theatres of Balaban & Katz for the Season of 1938-1939.

1. The theatres of Balaban & Katz hereinafter named are to exhibit the pictures licensed for 1938-39 season as provided herein. The clearance and the theatres as to which clearance are contracted for as part of the consideration for the license payments are herein stated. It is intended that the clearance herein provided are only the clearance reasonably required to successfully exhibit the pictures licensed at the theatres of Balaban & Katz herein named.

2. For the purpose of more conveniently designating the clearance with respect to the exhibition at Balaban & Katz theatres, pictures licensed, the playing positions or release weeks are designated as follows:

"A" Pre-Release:

These theatres to play in fourth, fifth or sixth weeks after the last day of first run exhibition downtown.

"B" Pre-Release:

These theatres to play in the seventh or eighth weeks after the last day of first run exhibition downtown.

"C" Pre-Release:

These theatres to play in the ninth week after the last day of first run exhibition downtown.

First Week General Release:

These theatres to play in the tenth week after the last day of first run exhibition downtown.

Second Week General Release:

These theatres to play in the eleventh week after the last day of first run exhibition downtown.

Third Week General Release:

These theatres to play in the twelfth week after the last day of first run exhibition downtown.

3097 3. The playing positions of Balaban & Katz theatres, according to schedule stated in paragraph 2 and the theatres as to which clearance are contracted for and the clearance agreed upon are stated as follows:

Chicago
United Artists
Roosevelt
Garrick
Apollo

These theatres to play first run downtown. McVickers theatre to play in last week of "A" as heretofore. Rialto theatre not to play prior to "B" pre-release weeks. Pastime, Woods, Monroe, Clark and LaSalle theatres not to play prior to "C" pre-release week. Casino theatre not to play prior to first week general release.

Uptown
Riviera
Granada

These theatres to play in "A" pre-release weeks. No theatre in the north or northern part of Cook County outside the city limits of Chicago (except Harding and Varsity, Evanston) or in Lake County, Illinois (except Waukegan) to play prior to "B" pre-release schedule.

Not to Play Prior to Same weeks
Harding
Varsity

Not to Play Prior to "B" Weeks.
Norshore
Century
Pantheon
Nortown
Belmont
Sheridan

Varsity
This theatre to play in "A" pre-release weeks.

Not to Play Prior to "B" Weeks
Delago
Aleyon (Highland Park)
Deerpath (Lake Forest)

Not to Play Prior to "C" Week
Howard
Wilmette
Valencia
Stadium

Not to Play Prior to First Week
Coronet

Norshore

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same weeks
Century
Pantheon
Nortown
Belmont
Sheridan

Not to Play Prior to "C" Week
Howard
Valencia
Devon

Not to Play Prior to First Week
Ridge

Not to Play Prior to Second Week
Adelphi
Four Hundred

3098 Century

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same weeks
Pantheon
Nortown
Belmont
Sheridan
Norshore

Not to Play Prior to "C" Week
Buckingham
Vogue
Covent
Wildsnor

Not to Play Prior to First Week
Vic-Mode
Music Box
Biograph
Lane Court

Not to Play Prior to Second Week
Strand-Plaza
Lincoln Hipp.
Lakeshore
Easterly
Claremont
Hollywood
Ideal

Not to Play Prior to Third Week
Parkway

Pantheon
This theatre to play in "B" pre-release weeks.
Not to Play Prior to Same Weeks
Nortown
Belmont
Sheridan
Norshore
Century

Not to Play Prior to First Week
DeLuxe
Mode-Calo
Lakeside
Davis-Bertha
Rosewood
Music Box
Bryn Mawr

Not to Play Prior to Second Week
Argmore

Nortown
This theatre to play in "B" pre-release weeks.
Not to Play Prior to Same weeks
Belmont
Sheridan
Norshore
Century
Pantheon

Not to Play Prior to "C" Week
Devon
Terminal

Not to Play Prior to First Week
Metro-Cine
Alba-Davis
Ridge-Calo
Bryn Mawr

Not to Play Prior to Second Week
Adelphi
Four Hundred

Belmont
This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same weeks
Sheridan
Norshore
Century
Pantheon
Nortown

Not to Play Prior to "C" Week
Covent
North Center
Buckingham

Not to Play Prior to First Week
Bertha-Davis
Biograph
Rosewood
Julian or Vic but not both.

Not to Play Prior to Second Week
City
Lincoln Hipp.
Hollywood
Easterly-Bugg

3099 Covent
This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
Buckingham
Vogue
Windsor

Not to Play Prior to First Week
Music Box
Lane Court
Mode-Vic
Biograph
Covent on
Century repeats

Not to Play Prior to Second Week
Lincoln-Hipp.
Hollywood
Clearemont
Plaza-Strand
Easterly
Lakeshore

Not to Play Prior to Third Week
Ideal
New Parkway

Lakeside

This theatre to play in first week of general release.

Not to Play Prior to Same Week
DeLuxe
Mode-Bryn Mawr

Not to Play Prior to Second Week
Argmore

Valencia

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
Stadium

Not to Play Prior to First Week
Coronet

Coronet

This theatre to play in the first week of general release.

3100 Harding

This theatre to play in "A" pre-release weeks following the Marbro theatre. No theatre in the north or northwest section of Chicago (except Uptown, Marbro, Riviera, Granada, Paradise and Varsity, Evanston) or in the northern part of Cook County, outside the city limits of Chicago or in Lake County, Illinois (except Waukegan) to play prior to or during the same week.

Not to Play Prior to "B" Weeks
Congress
Gateway

Not to Play Prior to First Week
Logan

Not to Play Prior to Second Week
Dale-Nita

Congress

This theatre to play in "B" pre-release weeks. No theatre (except Harding) in the section bounded on the west by Cicero, on the east by Halsted Street, on the south by Chicago Avenue and on the north by Irving Park Boulevard to play earlier than "C" pre-release week.

Not to Play Prior to Same weeks
- Gateway

Not to Play Prior to "C" Week
- Crown
- Crystal
- Tiffin
- Biltmore

Not to Play Prior to First Week
- Portage Park
- Admiral
- Oakley
- Alvin
- Embassy
- Milford
- Grand (North Ave.)
- Belpark

Not to Play Prior to Second Week
- Revue-Fox
- Rogers-Oak
- Avaloe-Rio
- Paulina-Banner
- Chopin-Avon
- Queen-Harmony
- New Strand-Dale
- Royal-Armitage

Not to Play Prior to Third Week
- Bell-Nita
- Webster

Gateway

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
- Congress

Not to Play Prior to "C" Week
- Terminal

Not to Play Prior to First Week
Park Ridge, Ill.
Metro-Irving
Will Rogers
Belpark
Portage Park

Not to Play Prior to Second Week
Revue

Not to Play Prior to Third Week
Jeff
Times

3101 Terminal

This theatre to play in "C" pre-release week.

Not to Play Prior to First Week
Belpark-Rivoli
Will Rogers
Admiral-Drake
Davis-Alba
Commodore
Bertha

Not to Play Prior to Second Week
Home-Metro
Revue

Belpark

This theatre to play in first week of general release.

Not to Play Prior to Same Week
Will Rogers
Rivoli-Drake
Patio-Embassy
Irving-Milford
Portage Park
Admiral

Not to Play Prior to Second Week
Luna-Karlov
Revue-Dale

Not to Play Prior to Third Week
New Home

Will Rogers

This theatre to play in first week of general release.

Not to Play Prior to Same Week
- Belpark
- Portage Park
- Patio-Elm

Not to Play Prior to Second Week
- Lana-Revue
- Karlov

Crystal

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
- Biltmore
- Crown

Not to Play Prior to First Week
- Grand (North Ave.)
- Oakley-Logan
- Alvin-Hub

Not to Play Prior to Second Week
- Vision-Avon
- Harmony-Rogers
- Avaloe-Queen
- Oak-Royal
- Banner-Armitage
- Paulina-Rio
- New Strand

3102 Biltmore

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
- Crown
- Crystal

Not to Play Prior to First Week
- Oakley-Hub
- Alvin
- Grand (North Ave.)

Not to Play Prior to Second Week
- Division
- Harmony-Oak
- Queen-Royal
- New Strand
- Chopin-Banner
- Paulina

Not to Play Prior to Third Week
Bell
Webster

Alba

This theatre to play in first week of general release.

Not to Play Prior to Same Week
Rivoli-Davis
Admiral-Drake
Commodore
Bertha

Not to Play Prior to Second Week
Home-Metro
New Albany
Revue

Luna

This theatre to play in second week of general release.

3103 Marbro

This theatre to play in "A" pre-release weeks. No theatre on the West Side, Northwest Side or Southwest Side of Chicago (except Harding and Paradise) or in the northwestern, western, or southwestern part of Cook County, Illinois to play prior to "B" pre-release weeks. (Paradise may play in "A" pre-release weeks if "A" admission charged)

Not to Play Prior to "B" Weeks
Senate
Congress
Gateway
Lamar, Oak Park
Lido, Maywood
Paradise
Montclaire

Paradise

This theatre to play in "B" pre-release weeks. (May play in "A" pre-release weeks if "A" admission charged.)

Not to Play Prior to Same Weeks
Senate
Congress
Gateway
Lamar, Oak Park
Lido, Maywood
Montclaire

Not to Play Prior to First Week
Crawford

Senate

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same weeks
Congress
Gateway
Lamar, Oak Park
Lido, Maywood
Paradise

Not to Play Prior to "C" Week
Central Park
Alamo-Crystal
Marshall Square
American-State
Broadway Strand

Not to Play Prior to First Week
Byrd-Douglas
West End-Hub
Vision-Crawford
Grand (North Ave.)
White Palace
Four Star
Illington-Oakley

Not to Play Prior to Second Week
Kedzie
Kedzie Annex

3104 State (Madison St.)

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
Lake-Manor
Forest Park
Berwyn

Not to Play Prior to First Week
Annette-Roxy
Oakwyn-Ritz
Iris-West End
Byrd-Symphony

Not to Play Prior to Second Week
Ambassador
Town-Park
Southern
Plaisance
Austin-Savoy
Hawthorne
Avenue

Manor
This theatre to play in "C" pre-release week.
Not to Play Prior to Same week
State
Not to Play Prior to First Week
Iris-Elm
Will Rogers
Symphony
Not to Play Prior to Second Week
Austin
Ambassador
Plaisance
Not to Play Prior to Third Week
New Home

Central Park
This theatre to play in "C" pre-release week.
Not to Play Prior to Same Week
Atlantic
Broadway Strand
Marshall Square
Not to Play Prior to First Week
Joy-Douglas
California
Crawford
Homan
White Palace
Not to Play Prior to Second Week
Lawndale
Lyric-Lindy
Lexington
Gold-Circle
20th Centry
Kedzie
Kedzie Annex

Not to Play Prior to Third Week
Harrison
Hamlin
Garfield
Road

Berwyn
This theatre to play in "C" pre-release week.
Not to Play Prior to Same Week
State
La Grange
Tivoli, Downers Gro.
Not to Play Prior to First Week
Ritz-Roxy
Oakwyn-Annette
Villas-Palace
Not to Play Prior to Second Week
Hawthorne
Town-Southern

3105 La Grange
This theatre to play in "C" pre-release week.
Not to Play Prior to Same Week
State-Berwyn
Argo
Tivoli, Downers Gro.
Not to Play Prior to First Week
Roxy, Berwyn
Hinsdale, Hinsdale
Not to Play Prior to Second Week
Villages of Brookfield, and Lyons, Ill.
Park, La Grange
Not to Play Prior to Third Week
Villages of Western Springs and Riverside, Ill.

Tivoli (Downers Grove)
This theatre to play in "C" pre-release week.
Not to Play Prior to Same Week
La Grange
Elmhurst
Wheaton

Not to Play Prior to First Week
Hinsdale
Naperville
Glen Ellyn
West Chicago
Lombard

Not to Play Prior to Second Week
Westmont
Bensonville

Park (La Grange)
This theatre to play in second week of general release.

Iris
This theatre to play in first week of general release on pictures clear on the Symphony Theatre. Repeat pictures on Symphony Theatre to play in second week of general release.

Not to Play Prior to Second Week
Ambassador
Park-Austin
Plaisance
Symphony on repeat pictures

3106 Tivoli
This theatre to play in "A" pre-release weeks. No theatre in the south or southwest section of Chicago (except Southtown and Avalon) or in the southern part of Cook County, outside the City limits of Chicago or in Lake County, Indiana (except Gary, Indiana Harbor and Hammond, Indiana) to play prior to "B" pre-release weeks. Gary, Indiana Harbor and Hammond, Indiana may play immediately following the last day of exhibition in this theatre except on pictures which play the Southtown, Avalon and Southtown theatres not to play until seven days after the last day of exhibition.

Not to Play Prior to "B" Weeks
Regal-Tower
Piccadilly
Stratford
Capitol
Southtown

This theatre to play in "A" pre-release weeks seven (7) days after the Tivoli Theatre. Clear pictures to play in "A" pre-release weeks. No theatre in the south or southwest section of Chicago (except Tivoli and Avalon) or in the southern part of Cook County, outside the city limits of Chicago or in Lake County, Indiana (except Gary, Indiana Harbor and Hammond, Indiana) to play prior to "B" pre-release weeks. Gary, Indiana Harbor and Hammond, Indiana to play immediately following the last day of exhibition in this theatre.

Not to Play Prior to Same weeks
- Avalon

Not to Play Prior to "B" Weeks
- Regal-Tower
- Piccadilly
- Stratford
- Capitol

Not to Play Prior to "C" Week
- Ogden-Cosmo
- Highland
- Maryland
- Peoples

Not to Play Prior to First Week
- E. A. R.-Harvard
- Englewood
- Triangle
- Regent
- Halfield

Tower

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same weeks
- Regal
- Piccadilly
- Stratford
- Capitol

Not to Play Prior to "C" Week
- Maryland
- Jeffery-Grove

Not to Play Prior to First Week
Jackson Park
Lexington
Hamilton
Frolic-Harper
Hyde Park
Midway or
Drexel but not both.

Not to Play Prior to Second Week
Kimbark
Park Manor
Vernon-Amo
Jefferson
Plaisance

Not to Play Prior to Third Week
Prairie
Langley

(Tower may play in "A" pre-release weeks if "A" admission price charged.)

3107 **Regal**

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same weeks
Piccadilly
Stratford
Capitol
Tower

Not to Play Prior to First Week
Owl
Michigan

Not to Play Prior to Second Week
Metropolitan
Indiana
Vernon-Emmet
Apollo-Park
Kenwood

Not to Play Prior to Third Week
Prairie
Harmony
Alma-Vista
Virginia
Public-Willard

Maryland

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
Jeffery
Grove

Not to Play Prior to First Week
Jackson Park
Lexington
Hamilton
Frolic-Harper
Hyde Park

Not to Play Prior to Second Week
Park Manor
Vernon-Amo
Jefferson
Plaisance
Kimbark or
Woodlawn but not both.
Drexel or
Midway but not both.

Not to Play Prior to Third Week
Prairie
Langley

3108 Balaban & Katz Corporation
Theatre Amusement Company
Balaban & Katz Northshore Account
Northern Amusement Company
Iris Amusement Company
Lund Theatre Corporation
By A. J. Kaufman, Agt.

Paramount Pictures Corporation
By C. L. Ragan

A part of contracts signed
and dated November 15, 1938.

3109 **PLAINTIFF'S EXHIBIT 78.**

Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

3110 Memorandum made a part of agreement between R. K. O. Film Exchange and Balaban & Katz Corporation concerning licensing of copyrighted motion pictures in theatres of Balaban & Katz for the season of 1938-39.

1. The theatres of Balaban & Katz hereinafter named are to exhibit the pictures licensed for 1938-39 season as provided herein. The clearance and the theatres as to which clearance are contracted for as part of the consideration for the license payments are herein stated. It is intended that the clearance herein provided are only the clearance reasonably required to successfully exhibit the pictures licensed at the theatres of Balaban & Katz herein named.

2. For the purpose of more conveniently designating clearance with respect to the exhibition at Balaban & Katz theatres, pictures licensed, the playing positions or release weeks are designated as follows:

"A" Pre-Release:

These theatres to play in the fourth, fifth or six weeks after the last day of first run exhibition downtown.

"B" Pre-Release:

These theatres to play in the seventh or eighth weeks after the last day of first run exhibition downtown.

"C" Pre-Release:

These theatres to play in the ninth week after the last day of first run exhibition downtown.

First Week General Release:

These theatres to play in the tenth week after the last day of first run exhibition downtown.

Second Week General Release:

These theatres to play in the eleventh week after the last day of first run exhibition downtown.

Third Week General Release:

These theatres to play in the twelfth week after the last day of first run exhibition downtown.

3111 3. The playing positions of Balaban & Katz the
atres, according to schedule stated in paragraph
and the theatres as to which clearance are contracted fo
and the clearance agreed upon are stated as follows:

Uptown-Riviera
Granada

These theatres to play in "A" pre-release weeks. N
theatre in the north or northern part of Cook County out
side the city limits of Chicago (except Harding and Var
sity, Evanston) or in Lake County, Illinois (except Wauke
gan) to play prior to "B" pre-release weeks.

Not Play Prior to Same Week
Harding
Varsity

Not to Play Prior to "B" Weeks
Norshore
Century
Pantheon
Nortown
Belmont
Sheridan

Varsity, Evanston

This theatre to play in "A" pre-release weeks.

Not to Play Prior to "B" Weeks
Delago
Alcyon (Highland Park)
Deerpath (Lake Forest)

Not to Play Prior to "C" Week
Howard
Wilmette

Not to Play Prior to First Week
Valencia
Stadium

Not to Play Prior to Second Week
Coronet

Norshore

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
Centry
Pantheon

Nortown
Belmont
Sheridan

Not to Play Prior to "C" Week
Howard
Devon

Not to Play Prior to First Week
Valencia
Ridge

Not to Play Prior to Second Week
Adelphi
Four Hundred

3112 Century

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same weeks
Pantheon
Nortown
Belmont
Sheridan

Not to Play Prior to "C" Week
Buckingham
Vogue
Windsor

Not to Play Prior to First Week
Vic-Mode
Music Box
Biograph
Lane Court
Covent (Repeats on Century)

Not to Play Prior to Second Week
City-Plaza
Lincoln Hippodrome
Lakeshore
Easterly
Claremont
Hollywood
Ideal

Not to Play Prior to Third Week
Parkway

Pantheon

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
- Nortown
- Belmont
- Sheridan
- Norshore
- Century

Not to Play Prior to First Week
- DeLuxe
- Mode-Calo
- Lakeside
- Rosewood
- Davis-Bertha
- Music Box
- Bryn Mawr

Not to Play Prior to Second Week
- Argmore

Nortown

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
- Belmont
- Sheridan
- Norshore
- Century
- Pantheon

Not to Play Prior to "C" Week
- Devon
- Terminal

Not to Play Prior to First Week
- Metro-Cine
- Alba-Davis
- Ridge-Calo
- Bryn Mawr

Not to Play Prior to Second Week
- Adelphi
- Four Hundred

Belmont

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks

Sheridan
Norshore
Century
Pantheon
Nortown

Not to Play Prior to "C" Week

Covent
North Center
Buckingham

Not to Play Prior to First Week

Bertha
Davis
Biograph
Rosewood
Julian or
Vic but not both

Not to Play Prior to Second Week

City
Lincoln Hippodrome
Easterly
Hollywood
Bugg

3113 Covent

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week

Buckingham
Vogue
Windsor

Not to Play Prior to First Week

Music Box
Lane Court
Mode-Vic
Biograph
Covent (Repeats on Century)

Not to Play Prior to Second Week

Lincoln Hippodrome
Hollywood
Claremont
Lakeshore
Plaza

Not to Play Prior to Third Week
Ideal
New Parkway

Lakeside

This theatre to play in first week of general release.

Not to Play Prior to Same Week.
DeLuxe
Mode
Bryn Mawr

Not to Play Prior to Second Week
Argmore

Cine

This theatre to play in the first week of general release.

Not to Play Prior to Same Week
Davis-Calo
Ridge
Bryn Mawr

Valencia

This theatre to play in first week of general release.

Not to Play Prior to Same Week
Stadium

Not to Play Prior to Second Week
Coronet

Coronet

This theatre to play in second week of general release.

3114 Marbro

This theatre to play in "A" pre-release weeks. No theatre on the West Side, Northwest Side or Southwest Side of Chicago (except Harding and Paradise) or in the northwestern, western or southwestern part of Cook County, Illinois, to play prior to "B" pre-release weeks. (Paradise may play in "A" pre-release weeks if "A" admission charged.)

Not to Play Prior to "B" Weeks
Senate
Congress
Gateway
Lamar, Oak Park
Lido Maywood
Paradise
Montclaire

Paradise

This theatre to play in "B" pre-release weeks. (May play in "A" pre-release weeks if "A" admission charged.)

Not to Play Prior to Same Weeks
- Senate
- Congress
- Gateway
- Lamar, Oak Park
- Lido, Maywood
- Montclaire

Not to Play Prior to First Week
- Crawford

Senate

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
- State
- Congress
- Gateway
- Lamar, Oak Park
- Lido, Maywood
- Paradise
- Montclaire

Not to Play Prior to "C" Week
- Central Park
- Alamo-Crystal
- Marshall Square
- American
- Broadway Strand

Not to Play Prior to First Week
- Byrd-Douglas
- West End-Hub
- Vision-Oakley
- Crawford
- Grand (North Ave.)
- White Palace
- Four Star
- Illington

Not to Play Prior to Second Week
- Kedzie
- Kedzie Annex

3115 State (Madison Street)

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
- Lake-Manor
- Forest Park
- Berwyn

Not to Play Prior to First Week
- Annette-Roxy
- **Oakwyn-Ritz**
- Iris-West End
- Byrd-Symphony

Not to Play Prior to Second Week
- Ambassador
- Town-Park
- Southern
- Plaisance
- Austin-Savoy
- Hawthorne
- **Avenue**

Manor

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
- State

Not to Play Prior to First Week
- **Iris**
- Will Rogers
- Elm-Symphony

Not to Play Prior to Second Week
- **Austin**
- Ambassador
- Plaisance

Not to Play Prior to Third Week
- New Home

Berwyn

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
- State
- La Grange
- Tivoli, Downers Grove

Not to Play Prior to First Week
Ritz-Roxy
Oakwyn
Annette
Villas
Palace

Not to Play Prior to Second Week
Hawthorne
Town
Southern

3116 La Grange
This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
State
Argo-Berwyn
Tivoli, Downers Grove

Not to Play Prior to First Week
Roxy, Berwyn
Hinsdale, Hinsdale

Not to Play Prior to Second Week
Villages of Brookfield and Lyons, Ill.,
Park, LaGrange

Not to Play Prior to Third Week
Villages of Western Springs and Riverside, Ill.

Tivoli (Downers Grove)
This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
LaGrange
Elmhurst
Wheaton

Not to Play Prior to First Week
Hinsdale
Naperville
Glen Ellyn
West Chicago
Lombard

Not to Play Prior to Second Week
Westmont
Bensonville

Park (LaGrange).

This theatre to play in second week of general release

Iris

This theatre to play in second week of general release

Not to Play Prior to Same Week
Ambassador
Plaisance

Not to Play Prior to Third Week
Park

3117 Harding

This theatre to play in "A" pre-release weeks following the Marbro Theatre. No theatre in the north or northwest section of Chicago (except Uptown, Marbro, Riviera, Granada, Paradise and Varsity, Evanston) or in the northern part of Cook County, outside the city limits of Chicago or in Lake County, Illinois (except Waukegan) to play prior to or during the same weeks.

Not to Play Prior to "B" Weeks
Congress
Gateway

Not to Play Prior to First Week
Logan

Not to Play Prior to Second Week
Dale
Nita

Congress

This theatre to play in "B" release weeks. No theatre (except Harding) in the section bounded on the west by Cicero, on the east by Halsted Street, on the south by Chicago Avenue and on the north by Irving Park Boulevard to play prior to "C" pre-release week.

Not to Play Prior to Same Week
Gateway

Not to Play Prior to "C" Week
Crown
Crystal
Tiffin
Biltmore

Not to Play Prior to First Week
Belpark
Portage Park
Admiral
Oakley-Alvin
Embassy
Milford
Grand (North Avenue)

Not to Play Prior to Second Week
Revue-Fox
Rogers-Oak
Avaloe-Rio
Paulina-Banner
Chopin-Avon
Queen-Harmony
New Strand
Royal-Dale
Armitage

Not to Play Prior to Third Week
Bell-Nita
Webster

Gateway
This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
Congress

Not to Play Prior to "C" Week
Terminal, Park Ridge, Ill.
(If Gateway plays in "B"

Not to Play Prior to First Week
Belpark
Will Rogers
Metro-Irving
Portage Park

Not to Play Prior to Second Week
Revue
Times (if Gateway plays in "B")

Not to Play Prior to Third Week
Jeff
Times (if Gateway plays in "C" Week)

3118 Terminal

This theatre to play in "C" pre-release week.

Not to Play Prior to First Week
- Belpark-Rivoli
- Will Rogers
- Admiral-Drake
- Davis
- Commodore
- Bertha

Not to Play Prior to Second Week
- Home-Metro
- New Albany
- Revue
- Alba

Crystal

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
- Biltmore
- Crown

Not to Play Prior to First Week
- Grand (North Avenue)
- Oakley-Logan
- Alvin-Hub

Not to Play Prior to Second Week
- Vision-Avon
- Harmony-Rogers
- Avaloe-Queen
- Oak-Royal
- Banner-Armitage
- Paulina-Rio
- New Strand

Biltmore

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
- Crown
- Crystal

Not to Play Prior to First Week
- Oakley-Hub
- Alvin
- Grand (North Avenue)

Not to Play Prior to Second Week
Vision
Harmony-Oak
Queen-Royal
New Strand
Chopin-Paulina
Banner

Not to Play Prior to Third Week
Bell
Webster

Belpark

This theatre to play in first week of general release.

Not to Play Prior to Same Week
Will Rogers
Rivoli-Drake
Patio-Embassy
Irving-Milford
Portage Park
Admiral

Not to Play Prior to Second Week
Luna-Karlov
Revue-Dale

Not to Play Prior to Third Week
New Home.

3119 Will Rogers

This theatre to play in first week of general release.

Not to Play Prior to Same Week
Belpark
Portage Park
Patio-Elm

Not to Play Prior to Second Week
Luna-Revue
Karlov

Alba

This theatre to play in second week of general release.

Not to Play Prior to Same week
Home-Metro
New Albany
Revue

Luna

This theatre to play in second week of general release.

3120 Tower

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Week
- Regal
- Piccadilly
- Stratford

Not to Play Prior to "C" Week
- Maryland
- Jeffery
- Grove

Not to Play Prior to First Week
- Jackson Park
- Lexington
- Hamilton
- Frolic-Harper
- Hyde Park
- Midway or
- Drexel, but not both

Not to Play Prior to Second Week
- Kimbark
- Park Manor
- Vernon-Amo
- Jefferson

Not to Play Prior to Third Week
- Prairie
- Langley

Maryland

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
- Jeffery
- Grove

Not to Play Prior to First Week
- Jackson Park
- Lexington
- Hamilton
- Frolic-Harper
- Hyde Park

Not to Play Prior to Second Week
Park Manor
Vernon-Amo
Kimbark or
Woodlawn, but not both
Drexel or
Midway, but not both

Not to Play Prior to Third Week
Prairie
Langley

Balaban & Katz Corporation
Theatre Amusement Company
Balaban & Katz Norshore Account
Northern Amusement Company
Lund Theatre Corporation
Iris Amusement Company.
By A. J. Kaufman, Jr.
Dec. 21, 38.

RKO Radio Pictures, Inc.
By J. Negheny.
April 18, 1939.

A part of contracts signed and dated Nov. 18, 1938.

Filed October 11, 1944. Roy H. Johnson, Clerk.

3122 Memorandum made a part of agreement between RKO Radio Pictures Incorporated and Balaban & Katz Corporation concerning licensing of copyrighted motion pictures in theatres of Balaban & Katz for the season of 1940-41.

1. The theatres of Balaban & Katz hereinafter named are to exhibit the pictures licensed for 1940-41 season as provided herein. The clearance and the theatres as to which clearance are contracted for as part of the consideration for the license payments are herein stated. It is intended that the clearance herein provided are only the clearance reasonably required to successfully exhibit the pictures licensed at the theatres of Balaban & Katz hereinnamed.

2. For the purpose of more conveniently designating clearance with respect to the exhibition at Balaban & Katz theatres, pictures licensed, the playing position, or release weeks are designated as follows:

"A" Pre-Release:

These theatres to play in the fourth, fifth or sixth weeks after the last day of first run exhibition downtown.

"B" Pre-Release:

These theatres to play in the seventh or eighth weeks after the last day of first run exhibition downtown.

"C" Pre-Release:

These theatres to play in the ninth week after the last day of first run exhibition downtown.

First Week General Release:

These theatres to play in the tenth week after the last day of first run exhibition downtown.

Second Week General Release:

These theatres to play in the eleventh week after the last day of first run exhibition downtown.

Third Week General Release:

These theatres to play in the twelfth week after the last day of first run exhibition downtown.

Minimum Admission Prices Governing Week of Release (Gov't Tax Not Included)

"A" Pre-Release:

Matinee 30c Evening 50c Children All Times 10c

"B" Pre-Release:
Matinee 25c Evening 40c Children All Times 10c

"C" Pre-Release:
Matinee 20c Evening 30c Children All Times 10c

First Week
Matinee 15c Evening 25c Children All Times 10c

Second Week
Matinee 15c Evening 20c Children All Times 10c

Third Week
Matinee 15c Evening 20c Children All Times 10c

Seventh Week
Matinee 15c Evening 15c Children All Times 10c

3123 3. The playing position of Balaban & Katz Theatres, according to schedule stated in paragraph 2 and the theatres as to which clearance are contracted for and the clearance agreed upon are stated as follows:

Uptown
Riviera
Granada

These theatres to play in "A" pre-release weeks. No theatre in the north or northern part of Cook County outside the city limits of Chicago (except the Varsity, Evanston) or in Lake County, Illinois, (except) Waukegan to play prior to "B" pre-release weeks.

Not to Play Prior to Same Weeks
Varsity

Not to Play Prior to "B" Weeks
Norshore
Century
Pantheon
Nortown
Belmont
Sheridan
Esquire

Varsity
Evanston, Ill.:

This theatre to play in "A" in pre-lease weeks.

Not to Play Prior to "B" Weeks
Del Lago
Alcyon (Highland Park)
Deer Path (Lake Forest)

Not to Play Prior to "C" Week
- Valencia
- Howard
- Wilmette
- Stadium

Not to Play Prior to First Weeks
- Coronet

Norshore

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
- Century
- Pantheon
- Nortown
- Belmont
- Sheridan
- Esquire

Not to Play Prior to "C" Week
- Howard
- Devon

Not to Play Prior to Second Week
- Adelphi
- Four Hundred

Howard

This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
- Devon

Not to Play Prior to First Week
- Ridge

Not to Play Prior to Second Week
- Adelphi
- "400"
- Coronet

3124 Century

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
- Pantheon
- Nortown
- Belmont
- Sheridan
- Norshore
- Esquire

Not to Play Prior to "C" Week
- Buckingham
- Vogue
- Covent—Clear pictures
- Windsor

Not to Play Prior to First Week
- Vic-Mode
- Music Box
- Biograph
- Lane Court
- Covent repeats on Century

Not to Play Prior to Second Week
- City-Plaza
- Lincoln Hipp
- Lake Shore
- Walton
- Claremont
- Hollywood
- Ideal

Not to Play Prior to Third Week
- Parkway

Pantheon

This theatre to play in "B" pre-release weeks

Not to Play Prior to Same Weeks
- Nortown
- Belmont
- Sheridan
- Norshore
- Century
- Esquire

Not to Play Prior to First Week
- DeLuxe
- Mode-Calo
- Lakeside
- Rosewood
- Davis-Bertha
- Music Box
- Bryn Mawr

Not to Play Prior to Second Week
- Argmore

Nortown

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
- Sheridan
- Belmont
- Norshore
- Century
- Pantheon
- Esquire

Not to Play Prior to "C" Week
- Devon
- Cine
- Ridge
- Calo

Not to Play Prior to First Week
- Davis

Not to Play Prior to Second Week
- Adelphi
- Four Hundred

Belmont

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
- Sheridan
- Norshore
- Century
- Pantheon
- Nortown
- Esquire

Not to Play Prior to "C" Week
- Covent
- North Center
- Buckingham

Not to Play Prior to First Week
- Bertha
- Davis
- Biograph
- Rosewood
- Julian—or Vic—but not both

Not to Play Prior to Second Week
- City
- Lincoln Hipp
- Walton
- Hollywood
- Bugg

3125 Covent

This theatre to play in "C" pre-release week, on clear pictures on Century.

Not to Play Prior to Same Week
- Buckingham
- Vogue
- Windsor

Not to Play Prior to First Week
- Music Box
- Lane Court
- Mode-Vic
- Biograph
- Covent—(repeats on Century)

Not to Play Prior to Second Week
- Lincoln Hipp
- Hollywood
- Lake Shore
- Plaza

Not to Play Prior to Third Week
- Ideal
- New Parkway

Lakeside

This theatre to play in first week of general release.

Not to Play Prior to Same Week
- DeLuxe
- Mode
- Bryn Mawr

Not to Play Prior to Second Week
- Argmore

Coronet, Evanston, Ill.

This theatre to play in second week of general release.

Marbro

This theatre to play in "A" pre-release weeks. No theatre on the West Side, Northwest Side or Southwest Side of Chicago (excepting Harding and Paradise) or in the northwestern, western or southwestern part of Cook County, Illinois to play prior to "B" pre-release weeks. (Paradise may play in "A" pre-release weeks if "A" admission charged.

Not to Play Prior to "B" Weeks

Senate
Congress
Gateway
Lamar, Oak Park
Lido, Maywood
Paradise
Montclaire

Paradise

This theatre to play in "B" pre-release weeks. (May play in "A" pre-release weeks if "A" admission charged.)

Not to Play Prior to Same Weeks

Senate
Congress
Gateway
Lamar, Oak Park
Lido, Maywood
Montclaire

Not to Play Prior to "C" Week

State

Not to Play Prior to First Week

Crawford

3126 Senate

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks

Congress
Gateway
Lamar, Oak Park
Lido, Maywood
Paradise
Montclaire

Not to Play Prior to "C" Week

Central Park
Alamo-Crystal
Marshall Square
American
Broadway Strand
State

Not to Play Prior to First Week
Byrd-Douglas
West End-Hub
Oakley
Crawford
White Palace
Four Star
Illington

Not to Play Prior to Second Week
Kedzie
Kedzie Annex
Harrison
Garfield

Not to Play Prior to Third Week
Alex

State—(Madison St.)
This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
Lake-Manor
Forest Park
Berwyn

Not to Play Prior to First Week
Annette
Oakwyn-Ritz
Iris-West End
Byrd-Symphony

Not to Play Prior to Second Week
Ambassador
Town-Park
Southern
Plaisance
Austin-Savoy
Hawthorn
Avenue

Manor
This theatre to play in "C" pre-release week.

Not to Play Prior to Same Week
State
Tiffin

Not to Play Prior to First Week
Iris
Will Rogers
Elm-Symphony
Not to Play Prior to Second Week
Austin
Ambassador
Plaisance
Not to Play Prior to Third Week
Main

Berwyn
This theatre to play in "C" pre-release week.
Not to Play Prior to Same Week
State
La Grange
Tivoli, Downers Grove
Not to Play Prior to First Week
Ritz-Roxy
Oakwyn
Annette
Villas
Palace
Not to Play Prior to Second Week
Hawthorne
Town
Southern
Olympic

La Grange
This theatre to play in "C" pre-release week.
Not to Play Prior to Same Week
State
3127 Argo-Berwyn
Tivoli-Downer Grove
Not to Play Prior to First Week
Roxy, Berwyn
Hinsdale, Hinsdale
Not to Play Prior to Second Week
Villages of Brookfield and Lyons, Ill.
Not to Play Prior to Third Week
Villages of Western Springs and Riverside

Park-La Grange

This theatre to play second week of release.

Harding

This theatre to play in "A" pre-release weeks following the Marbro Theatre. No theatre in the north or northwest section of Chicago (except Uptown, Marbro, Riviera, Granada, Paradise) or in the northern part of Cook County, outside the city limits of Chicago to play prior to or during the same weeks. Clear pictures may play in any "A" pre-release weeks.

Not to Play Prior to "B" Weeks
- Congress
- Gateway

Not to Play Prior to First Week
- Logan

Not to Play Prior to Second Week
- Dale
- Nita

Congress

This theatre to play in "B" pre-release weeks. No theatre (excepting Harding) in the section bounded on the west by Cicero, on the east by Halsted St., and on the south by Chicago Ave., and on the north by Irving Park Blvd., to play prior to "C" pre-release week.

Not to Play Prior to Same Week
- Gateway

Not to Play Prior to "C" Week
- Crown
- Crystal
- Tiffin
- Biltmore

Not to Play Prior to First Week
- Belpark
- Portage Park
- Admiral
- Oakley-Alvin
- Embassy
- Milford
- Grand (No. Ave.)

Not to Play Prior to Second Week
Revue-Fox
Rogers-Oak
Avaloe-Rio
Paulina-Banner
Chopin-Avon
Queen-Harmony
New Strand
Royal-Dale
Armitage

Not to Play Prior to Third Week
Bell-Nita
Webster

Gateway

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Weeks
Congress

Not to Play Prior to "C" Week
Terminal
Park Ridge, Ill.

Not to Play Prior to First Week
Belpark
Will Rogers
Metro-Irving
Portage Park

Not to Play Prior to Second Week
Revue
Times or Jeff, but not both

Not to Play Prior to Third Week
Times or Jeff, but not both

3128 Terminal

This theatre to play in "C" pre-release week.

Not to Play Prior to First Week
Belpark-Rivoli
Will Rogers
Admiral-Drake
Davis
Commodore
Bertha

Not to Play Prior to Second Week
Metro
Revue
Alba

Crystal
This theatre to play in "C" pre-release week.
Not to Play Prior to Same Week
Biltmore
Crown
Not to Play Prior to First Week
Grand (North Ave.)
Oakley-Logan
Alvin-Hub
Not to Play Prior to Second Week
Vision-Avon
Harmony-Rogers
Avaloe-Queen
Oak-Royal
Banner-Armitage
Paulina-Rio
New Strand

Biltmore
This theatre to play in "C" pre-release week.
Not to Play Prior to Same Week
Crown
Crystal
Not to Play Prior to First Week
Oakley-Hub
Alvin
Grand (North Ave.)
Not to Play Prior to Second Week
Vision
Harmony-Oak
Queen-Royal
New Strand
Chopin-Paulina
Banner
Not to Play Prior to Third Week
Bell
Webster

Belpark

This theatre to play in first week of general release.

Not to Play Prior to Same Week
- Will Rogers
- Rivoli-Drake
- Patio-Embassy
- Irving-Milford
- Portage Park
- Admiral

Not to Play Prior to Second Week
- Luna-Karlov
- Revue-Dale

Not to Play Prior to Third Week
- Main

Will Rogers

This theatre to play in first week of general release.

Not to Play Prior to Same Week
- Belpark-Patio-Elm
- Portage Park

Not to Play Prior to Second Week
- Luna-Revue-Karlov

3129 Alba

This theatre to play in second week of general release.

Not to Play Prior to Same Week
- Home
- New Albany
- Revue

Not to Play Prior to Third Week
- Metro or Alba Repeats

Tower

This theatre to play in "B" pre-release weeks.

Not to Play Prior to Same Week
- Regal
- Piccadilly
- Stratford

Not to Play Prior to "C" Week
Maryland
Jeffery
Grove
Rhodes

Not to Play Prior to First Week
Jackson Park
Lexington
Hamilton
Frolic-Harper
Hyde Park
Midway or Ark, but not both

Not to Play Prior to Second Week
Kimbark
Park Manor
Amo
Jefferson
Arc or Midway
Plaisance

Not to Play Prior to Third Week
Langley

Maryland
This theatre to play in "C" pre-release week

Not to Play Prior to Same Week
Jeffery
Grove
Rhodes
Beverly

Not to Play Prior to First Week
Jackson Park
Lexington
Hamilton
Frolic Harper
Hyde Park

Not to Play Prior to Second Week
Park Manor
Amo
Kimbark or Woodlawn, but not both
Ark or Midway, but not both
Jefferson
Plaisance

Not to Play Prior to Third Week
Langley
N. R. A.
Kimbark or Woodlawn
Ark or Midway

3130 Balaban & Katz Corporation
Theatre Amusement Company
Balaban & Katz Norshore Account
Northern Amusement Company
Land Theatre Corporation
Iris Amusement Company
By A. J. Kaufman, Agt.
10/23/40
RKO Radio Pictures Incorporated
By Ned E. Depinet

A part of contracts signed and dated

3131 Filed Oct. 11, 1944.

The following is Film License Agreement between RKO Radio Pictures, Inc., and Balaban & Katz Corporation dated November 18, 1938—PLAINTIFF'S EXHIBIT 84

3132 Original Exhibitor's Application.

Contract No. 2157 Page Two

Branch Chicago, Illinois
Theatre Balaban and Katz Corporation

R K O Radio Pictures, Inc.
License Agreement.

Schedule

Salesman Office
Block A

1938-1939 Feature Productions.

The Exhibitor agrees to play and pay for all feature pictures generally released by the Distributor on its 1938-1939 program and further agrees that he shall be entitled to such pictures only as are identified by production numbers running from 901 to 948.

The Exhibitor agrees that the Distributor shall have the right to designate not more than photoplays to be played on the percentage terms listed in this license, and to designate the terms upon which the remaining photoplays shall be exhibited. The Exhibitor further agrees that the Distributor, in its sole discretion, may interchange the license fees specified in the Schedule to be payable in respect of any photoplay with the license fees specified to be payable in respect of any other photoplay to be exhibited under this agreement. The Distributor agrees to interchange and or designate the terms for each photoplay by mailing notice in writing to the Exhibitor prior to the exhibition dates. The Exhibitor agrees to accept such photoplays on said terms and to give such photoplays playdates in accordance with clause seven of this license agreement and further agrees that the Distributer may designate of the photoplays to be played on percentage to be played on preferred time including a Saturday and or a Sunday.

If the license fees for any of the photoplays covered by this agreement are to be determined either in whole or in part upon the admissions receipts of the Exhibitor's theatre, the Distributor may employ any checking agency or its employees as the authorized representative of the Distributor provided for in Article Third hereof. If the Exhibitor shall refuse access to the theatre and its box office to any authorized representatives of the Distributor, the Distributor in addition to all other rights or remedies hereunder, may terminate the license herein granted in respect to the picture at the time being exhibited and immediately recover possession of the print of such picture without effecting this agreement insofar as it relates to other pictures.

This License Agreement Does Not Include the George O'Brien Pictures Unless Definitely Indicated in the Schedule.

Valencia Theatre, Evanston, (30) Thirty Features 2 3 40.00 each Balaban and Katz Corporation 1,200.

Iris Theatre, Chicago, (25) Twenty-Five Feat. 2 3 30.00 each Iris Amusement Company 750.

Tivoli Theatre, Downers Grove (30) Thirty Features 2 3 50.00 each Lund Theatre Corporation, Inc. 1500.

Luna Theatre, Chicago (36) Thirty-Six Features 2 3 25.00 each Theatre Amusement Company 900.

Cine Theatre, Chicago (30) Thirty Features 2 3 37.50 each Northern Amusement Company 1,125.

This license agreement does not include any feature or short subject pictures released by the Distributor during the 1938-1939 season which are produced by independent producers who have contracts with the Distributor providing that the pictures of such independent producers shall be licensed to exhibitors under separate exhibition contracts, nor does it include any feature or short subject pictures produced in color unless such color pictures are definitely indicated in the Schedule as being licensed hereunder.

The license fees above set forth opposite the respective groups of pictures are the actual license fees for each of such pictures in each group and the pictures are not licensed on an average basis.

Number of Features Offered 48
Number of Features Contracted for Detailed Above.
Total Feature License Fees (Including Score).

Admission Prices—The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

Matinee: Adults, orchestra balcony
children, orchestra balcony

Evening: Adults, orchestra balcony
children, orchestra balcony

Unless a greater admission price is specified above, the Exhibitor will charge an admission of not less than fifteen cents (15c) for adults at evening performances, and not less than ten cents (10c) at all other performances. If higher admission prices are specified above, however, such higher prices shall be charged.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon

the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Seven hereof.

Advertising Accessories—The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories:

Run—Clearance—Additional Remarks (No Clearance on Short Subjects and Pathe Newsreel):

Clearance and other provisions as detailed in letter dated November 18, 1938, is to be part of this contract. New Deal to be negotiated if theatres return to single feature policy.

Exhibitor agrees to play and pay for not less than single reels and two reel comedies to be played at the terms indicated on this contract and to be selected from the regular one and two reel subjects announced for the 1938-39 season.

The Exhibitor agrees to play and or pay for not less than features per commencing ;
two-reel comedies per commencing ;
one-reel-subjects per commencing ;
Pathe Newsreels per week commencing ,
if and as available until all pictures herein are exhibited and or paid for. All pictures must play within thirty (30) days of availability. The Exhibitor agrees to pay each week the sum of $ until the full amount of $ is paid for short subjects including Pathe Newsreels listed in this contract irrespective of the number of short subjects and Pathe Newsreels used each week. Payments to start 193

In Witness Whereof Balaban & Katz Corporation, the Exhibitor, operating the Above Theatres, located at in the City of Chicago, Illinois, has on November 18, 1938 executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Balaban & Katz Corporation
Exhibitor Partnership Corporation
Lessee Owner
(Indicate one)

By Exhibitor A. J. Kaufman Agt
Partner Gen. Mgr. Officer
(Indicate one)

Personally Guaranteed by 12/21/38

Accepted
RKO Radio Pictures, Inc.
By .....
General Sales Manager

Direction to Salesmen: While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor; you are hereby directed to forward the application to the office of your comany and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

3133 Branch Office Copy.

Contract No. 2157 Page Two.

Branch Chicago, Illinois
Theatre Balaban and Katz Corporation

RKO Radio Pictures, Inc.

License Agreement.

Schedule
Salesman Office
Block A

1938-1939 Feature Productions.

The Exhibitor agrees to play and pay for all feature pictures generally released by the Distributor on its 1938-1939 program and further agrees that he shall be entitled to such pictures only as are identified by production numbers running from 901 to 948.

The Exhibitor agrees that the Distributor shall have the right to designate not more than photoplays to be played on the percentage terms listed in this license, and to designate the terms upon which the remaining photoplays shall be exhibited. The Exhibitor further agrees that the Distributor, in its sole discretion, may interchange the license fees specified in the Schedule to be payable in respect of any photoplay with the license fees specified to be payable in respect of any other photoplay to be exhibited under this agreement. The Distributor agrees to interchange and or designate the terms for each photoplay by mailing notice in writing to the Exhibitor prior to the exhibition dates. The Exhibitor agrees to accept such photoplays on said terms and to give such photoplays playdates in accordance with clause seven of this license agreement and further agrees that the Distributor may designate of the photoplays to be played on percentage to be played on preferred time including a Saturday and/or a Sunday.

If the license fees for any of the photoplays covered by this agreement are to be determined either in whole or in part upon the admissions receipts of the Exhibitor's theatre, the Distributor may employ any checking agency or its employees as the authorized representative of the Distributor provided for in Article Third. If the Exhibitor shall refuse access to the theatre and its box office to any authorized representatives of the Distributor, the Distributor in addition to all other rights or

remedies hereunder, may terminate the license herein granted in respect to the picture at the time being exhibited and immediately recover possession of the print of such picture without affecting this agreement insofar as it relates to other pictures.

This License Agreement Does Not Include the George O'Brien Pictures Unless Definitely Indicated in the Schedule.

Valencia Theatre, Evanston, (30) Thirty Features 2/3 40.00 each × Balaban and Katz Corporation 1,200.

Iris Theatre, Chicago, (25) Twenty-Five Feat. 2/3 30.00 each × Iris Amusement Company 750.

Tivoli Theatre, Downers Grove, (30) Thirty Features 2/3 50.00 each × Lund Theatre Corporation, Inc. 1500.

Luna Theatre, Chicago, (36) Thirty-Six Features 2/3 25.00 each Theatre Amusement Company 900.

Cine Theatre, Chicago, (30) Thirty Features 2/3 37.50 each × Northern Amusement Company 1,125.00.

This license agreement does not include any feature or short subject pictures released by the Distributor during the 1938-1939 season which are produced by independent producers who have contracts with the Distributor providing that the pictures of such independent producers shall be licensed to exhibitors under separate exhibition contracts, nor does it include any feature or short subject pictures produced in color unless such color pictures are definitely indicated in the Schedule as being licensed hereunder.

The license fees above set forth opposite the respective groups of pictures are the actual license fees for each of such pictures in each group and the pictures are not licensed on an average basis.

Number of Features Offered 48
Number of Features Contracted for Detailed Above.
Total Feature License Fees (Including Score).

Admission Prices—The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

Matinee: Adults, orchestra balcony
children, orchestra balcony

Evening: Adults, orchestra balcony
children, orchestra balcony

Unless a greater admission price is specified above, the Exhibitor will charge an admission of not less than fifteen cents (15c) for adults at evening performance, and not less than ten cents (10c) at all other performances. If higher admission prices are specified above, however, such higher prices shall be charged.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right (a) to immediate terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture threafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Seven hereof.

Advertising Accessories—The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories:

Run—Clearance—Additional Remarks (No Clearance on Short Subjects and Pathe Newsreel):

Clearance and other provisions as detailed in letter dated November 18, 1938, is to be part of this contract. New Deal to be negotiated if theatres return to single feature policy.

Exhibitor agrees to play and pay for not less than single reels and two reel comedies to be played at the terms indicated on this contract and to be selected from the regular one and two reel subjects announced for the 1938-39 season.

The Exhibitor agrees to play and/or pay for not less than features per commencing .....;

two-reel comedies per commencing
one-reel subjects per commencing
Pathe Newsreels per week commencing
if and as available until all pictures herein are exhibited and/or paid for. All pictures must play within thirty (30) days of availability. The Exhibitor agrees to pay each week the sum of $ until the full amount of $ is paid for short subjects including Pathe Newsreels listed in this contract irrespective of the number of short subjects and Pathe Newsreels used each week. Payments to start 193.

In Witness Whereof Balaban & Katz Corporation, the Exhibitor, operating the Above Theatres, located at in the City of Chicago, Illinois, has on November 18, 1938 executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Balaban & Katz, Corporation
Exhibitor Partnership Corporation
Lessee Owner
(Indicate one)
By Exhibitor A. J. Kaufman Agt
Partner Gen. Mgr. Officer
(Indicate one)
Personally Guaranteed by

Accepted 12/21/38
RKO Radio Pictures, Inc.
Apr. 18, 1938.
By
General Sales Manager

Direction to Salesmen: While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

3134 RKO Pictures, Inc. Page 1

Agreement, made in one or more counterparts, between RKO Radio Pictures, Inc., a corporation (hereinafter referred to as "The Distributor"), party of the first part, and Exhibitor hereinafter named and referred to as the "Exhibitor," operating the theatre or theaters hereinafter designated, party of the second part.

Witnesseth:

The parties hereto agree as follows:

License.

First: Subject to the payment by the Exhibitor of the fixed sums and/or percentages specified in the schedule on the reverse side hereof, which schedule is incorporated herein and made a part of this agreement, and subject to all of the other terms and conditions herein provided, the Distributor hereby grants, and agrees to grant, to the Exhibitor and the Exhibitor hereby accepts, and agrees to accept, a limited license under the copywrights of the respective motion picture designated and described in the schedule (hereinafter called the picture(s) and under any copyrights of any matter included in any sound recorded for reproduction in connection with the exhibition of any of the pictures, to exhibit publicly the respective pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the theatre described in the schedule (hereinafter called the theatre) for the number of days specified in the schedule, which days shall be only the dates determined as provided in Article Seventh hereof, and at no other time or place and for no other use or purpose. The license to reproduce such recorded sound, or any thereof, is granted and agreed to be granted only upon the express warranty and agreement by the Exhibitor and upon the express condition that (a) the sound reproducing equipment in the theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether it is recorded upon a print or upon separate records, discs or other similar devices; and (b) if copyrighted musical compositions shall be included in such recorded sound, the Exhibitor will have, at the time of the reproduction thereof,

an effective license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly such copyrighted musical compositions. The Distributor may record such sound, or any part thereof, on the prints of the respective pictures or on separate records, discs or other devices, as the Distributor may from time to time elect and all references to a print made herein shall be deemed to include any records, discs or other devices upon which sound is recorded for reproduction in connection with the exhibition of such print. The license herein granted in respect to each picture shall extend only to the exhibition of the print of such picture delivered by the Distributor to the Exhibitor pursuant to Article Sixth hereof, and shall not extend to the exhibition of any other print.

If more than one theatre is designated in the schedule, no license is granted or agreed to be granted hereunder for the exhibition of any picture at more than one of such theatres unless it is otherwise specifically so stated in the schedule.

This agreement licenses the exhibition of pictures generally released by the Distributor for distribution in the United States of America during the period commencing September 1, 1938, and ending August 31, 1939, only: Provided, However, that in case the Distributor shall generally release after August 31, 1939 and prior to December 31, 1939 any picture or pictures which it shall have designated to exhibitors generally as a 1938-1939 picture or as 1938-1939 pictures, such picture or pictures shall be included in this license and shall be exhibited by the Exhibitor hereunder, unless the Exhibitor, on or before September 10, 1939, shall notify the Distributor, in writing, that the Exhibitor has elected to reject such picture, or, if more than one picture, that the Exhibitor has elected to reject all (but not less than all) of such pictures. In the event that the Exhibitor shall give the Distributor any such written notice of rejection, such picture or pictures shall be excepted and excluded from this license. All pictures released after December 31, 1939 are excluded from this license.

The term of this agreement, unless otherwise provided in the schedule, shall be for a period of eighteen (18) months from the time fixed as hereinafter provided for the exhibition of the first picture hereunder.

Time and Place of Exhibition

Second: The Exhibitor agrees to exhibit the pictures under the license herein granted in the order of their release, if and as available, only at the theatre on the exhibition date or dates fixed in the schedule or determined as hereinafter provided and subject to all of the terms and conditions of this license agreement. The Exhibitor will not allow any positive print to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor and will not exhibit or permit the exhibition of any such positive print at any other time or place.

Payment

Third: The Exhibitor agrees to pay for the license to exhibit such picture the fixed sums specified in the schedule at least three (3) days in advance of the date of shipment of the positive print of such picture from the Distributor's exchange or from the last previous exhibitor, as the case may be.

Percentage Booking

If it is provided in the schedule that all or any part of the license fee for the exhibition of any picture or pictures shall be computed upon the Exhibitor's gross receipts, such payment shall be made immediately after the last exhibition upon the last day of exhibition of each such pictures and shall be accompanied by a correct itemized statement of the gross receipts of the theatre for admission thereto upon the exhibition date or dates of the particular picture or pictures. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor. Upon such exhibition date or dates the Distributor or its authorized representative may verify the sale of all tickets of admission to the theatre and may examine the books and records of the Exhibitor insofar as they relate to such gross receipts and for any such purpose may have access to the theatre and its box office. The Distributor or its authorized representative also may have access to all of the Exhibitor's books and records for the purpose of verifying such box office statement and if the operating expenses of the theatre are an element to be considered in computing the amounts payable to the Distributor hereunder, the Distributor or its authorized representative may examine

and audit all of the Exhibitor's books and records relating to the Exhibitor's operating expenses for a period of sixty (60) days after the receipt by the Distributor of the final box office statement and or statement of operating expenses. Any information obtained by the Distributor pursuant to the provisions of said Article Third shall be treated as confidential except in any litigation in respect of this agreement. The Distributor agrees that unless its authorized representative shall be a regular employee of the Distributor it will not employ as its authorized representative any person who is a resident of or regularly employed in the place where the theatre is located, except with the written consent of the Exhibitor. In accounting to the Distributor hereunder the Exhibitor shall account on the basis of admission prices to the theatre for each person admitted to the theatre except only for a customary and reasonable number of free admissions to representatives of the press and or in consideration of theatre advertising.

Payment on Account

Fourth: Payment, if any made upon the execution hereof by the Exhibitor shall be deemed payment on account of the sums last payable hereunder.

Clearance and Run

Fifth: (a) In the event that it is stated in the schedule that the theatre shall have "clearance" or a specified "run" and the Exhibitor shall have exhibited each of the pictures on the dates determined as is in Article Seventh hereof provided, the Distributor will not grant a license to any other party to exhibit any of the pictures so exhibited by the Exhibitor at any theatre specifically named in the schedule or within the territorial limits specified in the schedule, as the case may be, on a date prior to the expiration of the so-called "clearance period" or prior to the so-called "run" granted the Exhibitor. The period of "clearance" in the case of each picture shall be computed from the last day of the exhibition thereof. If the "clearance" is granted against a named theatre or theatres and it is clearly indicated that it is the intention of the Distributor to grant such "clearance" against all theatres in the immediate vicinity of the Exhibitor's theatre, then, unless otherwise provided in the schedule, such "clearance" shall include any theatre hereafter erected or opened in such vicinity; if such theatre is recognized in the motion

picture industry as being in direct opposition to the theatre. Anything herein contained to the contrary notwithstanding, no "clearance" shall be given in respect of any picture not exhibited on the date or dates originally designated by the Exhibitor or the Distributor in accordance with Article Seventh hereof unless the parties mutually shall agree otherwise in writing.

(b) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (c) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Second Run Exhibitions

(c) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (c) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (b) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration

of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Subsequent Runs Exhibitions

(d) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (e) of this Clause within the said period of fourteen (14) days specified in Paragraph (c) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen (14) day period and ending seven (7) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Extended Runs

(e) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause.

Exhibition After Revocation of Run and Clearance

(f) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (b), (c) or (d) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to September 1, 1933, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Delivery and Return of Prints

Sixth: The Distributor agrees to deliver to the Exhibitor a positive print suitable for exhibition of each of the pictures for exhibition at the theatre on the dates on which such exhibitions are licensed hereunder. Delivery of such positive print by the Distributor to the Exhibitor at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof, in accordance with the carrier's time schedule, to deliver prints to the Exhibitor or at the place where the theatre is located at least one hour before the usual time for the opening of the theatre.

The Exhibitor agrees to return each postive print received by the Exhibitor hereunder, with the reels and containers furnished therewith, to the exchange of the Distributor from which the Exhibitor is served, or as otherwise

directed by the Distributor, immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, *to a carrier designated or used by the Distributor* and proper receipt therefor, obtained by the Exhibitor, shall constitute the return of such positive prints by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Selection of Playdates

Seventh: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date (illegible) of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates

not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor. In such event the license fees payable hereunder for such picture shall become due and payable on the date or dates so designated by the Distributor and the Distributor shall be under no obligations to ship or tender a print of such picture to the Exhibitor unless the Exhibitor shall have confirmed such date or dates in writing after the designation thereof by the Distributor.

Loss of and Damage to Prints

Eighth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor, repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's

exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Description of Pictures

Ninth: (a) The Distributor shall have and hereby reserves the right in the sole discretion of the Distributor to change the title of any of the said motion pictures, to make changes in, alterations and adaptations of any story, book or play and to substitute for any thereof any other story, book or play. The Distributor also shall have and hereby reserves the right to change the director, the cast or any member thereof of any of said motion pictures.

(b) The Exhibitor shall not be required to accept for any feature motion picture described in the Schedule as that of a named star or stars, director or named well-known author, book or play, any motion picture of any other star or stars, director, author, book or play, nor to accept any other feature motion picture in place of any thereof which in the Schedule is designated "no substitutes." The right of rejection conferred on the Exhibitor by this Clause is in addition to the right of exclusion provided in Article Sixteenth hereof.

(c) There shall not be included in this agreement (unless otherwise indicated in the Schedule) any of the following types of motion picture: (1) releases of old negatives; (2) old negatives retitled; or (3) foreign pictures produced by foreign producers. A foreign picture produced by a corporation subsidiary to the Distributor or affiliated with the Distributor through stock ownership or a foreign picture in which the Distributor or any such subsidiary or affiliated corporation of the Distributor shall have a financial interest shall not be deemed to be a foreign picture produced by a foreign producer, described in clause (3) above and any such picture shall be included in this agreement.

The Distributor warrants that none of said motion pictures contain or will contain any advertising matter for which compensation is received by the Distributor or any corporation subsidiary to or affiliated with the Distributor.

Assignment Upon Sale of Theatre

Tenth: This agreement shall not be assigned by either party without the written acceptance of the assignee and

the written consent of the other party; provided, that if the Exhibitor sells or disposes of his interest in the theatre, he may assign this agreement to the purchaser of such interest without the written consent of the Distributor, and such assignment shall become effective upon the written acceptance thereof by the assignee; such assignment, however, shall not relieve the Exhibitor of liability hereunder, unless the Distributor consents in writing to release the Exhibitor from such liability. In the event that the Exhibitor shall cease to operate, or shall cease to remain in possession of, the theatre and shall not assign this agreement as herein permitted, the Distributor may, at its election, cancel and terminate this agreement immediately, without waiving or impairing any other right or remedy afforded the Distributor in law or in equity.

Exhibition and Advertising

Eleventh: The Exhibitor agrees to run pictures (excepting "news reels") as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each picture as a "Radio Picture." In all newspaper advertising and publicity issued by the Exhibitor relating to the pictures, the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Unless this agreement expressly provides for the "first run" in the City or Town wherein the theatre is located, the Exhibitor agrees not to advertise any of the pictures by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to, and until after the completion of, the exhibition thereof by any other exhibitor having the right of the "first run" or any other prior run thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other agreement with any other exhibitor.

Taxes

Twelfth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the

sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Delay In Or Prevention of Performance

Thirteenth: If either the Exhibitor or the Distributor shall be prevented from performing its obligations hereunder with respect to any picture or pictures for causes beyond its direct control, the license in respect of each such picture or pictures shall terminate and revert to the Distributor without liability on the part of either party, provided that the party prevented from performing shall give reasonable written notice of the prevention of performance and the nature of such prevention.

Waiver Verbal Promises: Representations

Fourteenth: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Fifteenth: This agreement is complete and no promise or representations have been made by either party to the other except as set forth herein.

Option to Exclude if Group Licensed

Sixteenth: If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder and unless the Exhibitor is granted other rights to exclude pictures hereunder, the Exhibitor may exclude from this license agreement not to exceed ten (10%) percent of the total number of feature motion pictures licensed hereunder.

Such privilege of exclusion may be exercised only if the Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said feature mo

tion pictures within fourteen (14) days after notice of availability of such picture to the Exhibitor.

In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (1/2) shall be regarded as one (1).

Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

Acceptance By Distributor

Seventeenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Liquidated Damages, Percentage Bookings

Eighteenth: If the license fee of any picture is to be computed either in whole or in part, upon a percentage of the gross admission receipts of the theatre, and if the Exhibitor fails or refuses to exhibit such picture as provided in this agreement, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit such picture (in addition to any fixed sums payable hereunder in respect of such picture) a sum equal to such percentage of the average daily gross receipts of the theatre duging the period of thirty (30) operating days immediately prior to the date or dates when such picture should have been so exhibited, provided, however, that if the Exhibitor shall exhibit such picture for less than the full number of days provided for in this agreement, such sum equal to such percentage shall be computed, upon a sum equal to seventy-five per cent (75%)

of the gross receipts of the theatre for the last day of the exhibition thereat of such picture.

Road Shows.

Nineteenth: (a) The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territorities, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both said territorities.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor writ

ten notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territorities, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion pictures shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Article First shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Article First and Sixteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as herein provided terminate and revert to the Distributor.

Additional Pictures

Twentieth: Where any picture is designated in the schedule by the name of a single star or by the name of a single director, such designation shall not refer to, and there shall not be included in this agreement because of such designation, any picture in which such star shall appear with any other star or stars, whether or not such stars are named in the schedule, nor shall there be included in this agreement because of such designation, any picture which may be directed by such director so long as there shall appear in such picture any star or stars.

The Distributor may release, at any time, independently of this agreement, an additional picture or pictures of any star or stars designated in the schedule (but not more than two of such pictures during the period described in Article First hereof) and nothing in this agreement contained shall be deemed to give the Exhibitor any right to any such additional picture, but any such additional picture, whenever released, may be exhibited and or licensed for exhibition free of any claim thereto by the Exhibitor, without affecting in any manner the Distributor's obligation to furnish, and the Exhibitor's obligation to accept, any and all of the pictures, as described in the schedule.

Cancellation In Event of Default

Twenty-First: In the event that the Exhibitor shall (a) fail or refuse to exhibit or pay the license fee in respect of any picture, (b) fail or refuse to select or designate a date for the exhibition thereof as in Article Seventh hereof provided, (c) refuse to permit the Distributor or its authorized representative access to the theatre and its box office for the purpose specified in Article Third hereof, or (d) otherwise default in its obligations hereunder, the Distributor, at its election, may consider any such action or failure to act (hereinafter referred to as a default) as a material breach hereof by the Exhibitor and may, at its election, (1) terminate this agreement with respect to pictures not theretofore delivered, (2) withhold the delivery of additional pictures until such default shall be remedied, or (3) if such default shall relate to the payment of the license fees in respect of any picture or pictures, the Distributor may deliver any subsequent picture c.o.d in an amount sufficient to pay the license fee for such subsequent picture and all previous pictures in respect of which the

license fees are delinquent. If the Distributor shall elect to cancel and terminate this agreement, the grant, if any, of the run or clearance in respect of all pictures licensed hereunder shall stand revoked; the license in respect thereof shall revert to the Distributor; and the Distributor may thereafter license to other exhibitors any or all of such pictures.

In the event that the Exhibitor is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or in the event that a receiver, liquidator or trustee is appointed for the affairs of the Exhibitor, the Distributor, at any time thereafter, may terminate this agreement in respect of pictures not theretofore delivered to the Exhibitor hereunder by giving the Exhibitor notice in writing of its election so to do.

The election by the Distributor of any remedy hereunder shall not be deemed an election of such remedy in connection with any other default of the Exhibitor nor shall it be deemed as a waiver of any further or additional right or remedy of the Distributor in law or in equity.

Midnight Shows Consecutive Dates

Twenty-Second: The license herein granted for the number of days specified in the Schedule shall not be deemed to include the right of exhibition at any time during the period prior to six A. M. on the date of first date of exhibition herein provided for, unless this license shall otherwise expressly permit exhibition prior to six A. M. on said date or first exhibition date. Unless this license shall otherwise expressly permit exhibition of each picture on dates which are not consecutive, if the number of dates of exhibitions designated or otherwise agreed upon, as provided herein, are less than the maximum number of days herein specified, this license shall, upon such designation or agreement, be limited to the number of dates so designated or otherwise agreed upon, and in such event the maximum number of days herein specified for any such picture shall be deemed to be reduced accordingly.

Twenty-Third: The following Schedule and all of the written and printed parts thereof are a part of this license

(continued on reverse side).

3135 RKO Radio Pictures, Inc.

Agreement, made in one or more counterparts, between RKO Radio Pictures, Inc., a corporation (hereinafter referred to as "The Distributor"), party of the first part, and Exhibitor hereinafter named and referred to as the "Exhibitor," operating the theatre or theatres hereinafter designated, party of the second part.

Witnesseth:

License

The parties hereto agree as follows:

First: Subject to the payment by the Exhibitor of the fixed sums and/or percentages specified in the schedule on the reverse side hereof, which schedule is incorporated herein and made a part of this agreement, and subject to all of the other terms and conditions herein provided, the Distributor hereby grants, and agrees to grant, to the Exhibitor and the Exhibitor hereby accepts and agrees to accept, a limited license under the copyrights of the respective motion pictures designated and described in the schedule (hereinafter called the pictures) and under any copyrights of any matter included in any sound recorded for reproduction in connection with the exhibition of any of the pictures, to exhibit publicly the respective pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the theatre described in the schedule (hereinafter called the theatre) for the number of days specified in the schedule, which days shall be only the dates determined as provided in Article Seventh hereof, and at no other time or place and for no other use or purpose. The license to reproduce such recorded sound, or any thereof, is granted and agreed to be granted only upon the express warranty and agreement by the Exhibitor and upon the express condition that (a) the sound reproducing equipment in the theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether it is recorded upon a print or upon separate records, discs or other similar devices; and (b) if copyrighted musical compositions shall be included in such recorded sound, the Exhibitor will have, at the time of the reproduction thereof, an effective license from the copyright proprietor thereof

or from any licensee of such copyright proprietor to perform publicly such copyrighted musical compositions. The Distributor may record such sound, or any part thereof, on the prints of the respective pictures or on separate records, discs or other devices, as the Distributor may from time to time elect and all references to a print made herein shall be deemed to include any records, discs or other devices upon which sound is recorded for reproduction in connection with the exhibition of such print. The license herein granted in respect of each picture shall extend only to the exhibition of the print of such pictures delivered by the Distributor to the Exhibitor pursuant to Article Sixth hereof, and shall not extend to the exhibition of any other print.

If more than one theatre is designated in the schedule, no license is granted or agreed to be granted hereunder for the exhibition of any picture at more than one of such theatres unless it is otherwise specifically so stated in the schedule.

This agreement licenses the exhibition of pictures generally released by the Distributor for distribution in the United States of America during the period commencing September 1, 1938, and ending August 31, 1939, only Provided, However, that in case the Distributor shall generally release after August 31, 1939 and prior to December 31, 1939 any picture or pictures which it shall have designated to exhibitors generally as a 1938-1939 picture or as 1938-1939 pictures, such picture or pictures shall be included in this license and shall be exhibited by the Exhibitor hereunder, unless the Exhibitor, on or before September 10, 1939, shall notify the Distributor, in writing, that the Exhibitor has elected to reject such picture, or, if more than one picture, that the Exhibitor has elected to reject all (but not less than all) of such pictures. In the event that the Exhibitor shall give the Distributor any such written notice of rejection, such picture or pictures shall be excepted and excluded from this license. All pictures released after December 31, 1939 are excluded from this license.

The term of this agreement, unless otherwise provided in the schedule, shall be for a period of eighteen (18) months from the time fixed as hereinafter provided for the exhibition of the first picture hereunder.

Time and Place of Exhibition

Second: The Exhibitor agrees to exhibit the pictures under the license herein granted in the order of their release, if and as available, only at the theatre on the exhibition date or dates fixed in the schedule or determined as hereinafter provided and subject to all of the terms and conditions of this license agreement. The Exhibitor will not allow any positive print to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor and will not exhibit or permit the exhibition of any such positive print at any other time or place.

Payment

Third: The Exhibitor agrees to pay for the license to exhibit each picture the fixed sums specified in the schedule at least three (3) days in advance of the date of shipment of the positive print of such picture from the Distributor's exchange or from the last previous exhibitor, as the case may be.

Percentage Bookings

If it is provided in the schedule that all or any part of the license fee for the exhibition of any picture or pictures shall be computed upon the Exhibitor's gross receipts, such payment shall be made immediately after the last exhibition upon the last day of exhibition of each such picture and shall be accompanied by a correct itemized statement of the gross receipts of the theatre for admission thereto upon the exhibition date or dates of the particular picture or pictures. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor. Upon such exhibition date or dates the Distributor or its authorized representative may verify the sale of all tickets of admission to the theatre and may examine the books and records of the Exhibitor insofar as they relate to such gross receipts and for any such purpose may have access to the theatre and its box office. The Distributor or its authorized representative also may have access to all of the Exhibitor's books and record for the purpose of verifying such box office statement and if the operating expenses of of the theatre are an element to be considered in computing the amounts payable to the Distributor hereunder, the

Distributor or its authorized representative may examine and audit all of the Exhibitor's books and records relating to the Exhibitor's operating expenses for a period of sixty (60) days after the receipt by the Distributor of the final box office statement and/or statement of operating expenses. Any information obtained by the Distributor pursuant to the provisions of said Article Third shall be treated as confidential except in any litigation in respect of this agreement. The Distributor agrees that unless its authorized representative shall be a regular employee of the Distributor it will not employ as its authorized representative any person who is a resident of or regularly employed in the place where the theatre is located, except with the written consent of the Exhibitor. In accounting to the Distributor hereunder the Exhibitor shall account on the basis of admission prices to the theatre for each person admitted to the theatre except only for a customary and reasonable number of free admissions to representatives of the press and/or in consideration of theatre advertising.

Payment on Account

Fourth: Payment, if any made upon the execution hereof by the Exhibitor shall be deemed payment on account of the sums last payable hereunder.

Clearance and Run

Fifth: (a) in the event that it is stated in the schedule that the theatre shall have "clearance" or a specified "run" and the Exhibitor shall have exhibited each of the pictures on the dates determined as is in Article Seventh hereof provided, the Distributor will not grant a license to any other party to exhibit any of the pictures so exhibited by the Exhibitor at any theatre specifically named in the schedule or within the territorial limits specified in the schedule, as the case may be, on a date prior to the expiration of the so-called "clearance period" or prior to the so-called "run" granted the Exhibitor. The period of "clearance" in the case of each picture shall be computed from the last day of the exhibition thereof. If the "clearing" is granted against a named theatre or theatres and it is clearly indicated that it is the intention of the Distributor to grant such "clearance" against all theatres

in the immediate vicinity of the Exhibitor's theatre, then, unless otherwise provided in the schedule, such "clearance" shall include any theatre hereafter erected or opened in such vicinity; if such theatre is recognized in the motion picture industry as being in direct opposition to the theatre. Anything herein contained to the contrary notwithstanding, no "clearance" shall be given in respect of any picture not exhibited on the date or dates originally designated by the Exhibitor or the Distributor in accordance with Article Seventh hereof unless the parties mutually shall agree otherwise in writing.

First Run Exhibitions

(b) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (c) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run, and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Second Run Exhibitions

(c) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such

second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (e) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (b) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Subsequent Runs Exhibitions.

(d) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (e) of this Clause within the said period of fourteen (14) days specified in Paragraph (c) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen (14) day period and ending seven (7) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) days period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Extended Runs

(e) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause.

Exhibition After Revocation of Run and Clearance

(f) Upon the waiver of the grant of the run and or the clearance period of any feature motion picture as provided in Paragraphs (b), (c) or (d) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to September 1, 1933, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Delivery and Return of Prints

Sixth: The Distributor agrees to deliver to the Exhibitor a positive print suitable for exhibition of each of the pictures for exhibition at the theatre on the dates on which such exhibitions are licensed hereunder. Delivery of such positive print by the Distributor to the Exhibitor at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof, in accordance with the carrier's time schedule, to deliver prints to the Exhibitor or at the place where the theatre is lo-

cated at least one hour before the usual time for the opening of the theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels and containers furnished therewith, to the exchange of the Distributor from which the Exhibitor is served, or as otherwise directed by the Distributor, immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers from the Distributor's exchange or the last previous exhibitor having possession of any such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor, obtained by the Exhibitor, shall constitute the return of such positive prints by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Selection of Playdates

Seventh: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing

of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor. In such event the license fees payable hereunder for such picture shall become due and payable on the date or dates so designated by the Distributor and the Distributor shall be under no obligation to ship or tender a print of sifch picture to the Exhibitor unless the Exhibitor shall have confirmed such date or dates in writing after the designation thereof by the Distributor.

Loss of and Damage to Prints

Eighth. The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels"; upon their return to the Distributor within sixty (60) days after the date when the same should have been returned hereinunder. The Exhibitor shall not be liable for the damage or destruction of any positive print, provided the Exhibitor establishes such damage or destruction occurred while in transit from

the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Description of Pictures

Ninth: (a) The Distributor shall have and hereby reserves the right in the sole discretion of the Distributor to change the title of any of the said motion pictures, to make changes in, alterations and adaptations of any story, book or play and to substitute for any thereof any other story, book or play. The Distributor also shall have and hereby reserves the right to change the director, the cast or any member thereof of any of said motion pictures.

(b) The Exhibitor shall not be required to accept for any feature motion picture described in the Schedule as that of a named star or stars, director or named well known author, book or play, any motion picture or any other star or stars, director, author, book or play, nor to accept any other feature motion picture in place of any thereof which in the Schedule is designated "no substitutes." The right of rejection conferred on the Exhibitor by this Clause is in addition to the right of exclusion provided in Article Sixteenth hereof.

(c) There shall not be included in this agreement (unless otherwise indicated in the Schedule) any of the following types of motion pictures (1) reissues of old negatives; (2) old negatives retitled; or (3) foreign pictures produced by foreign producers. A foreign picture produced by a corporation subsidiary to the Distributor or affiliated with the Distributor through stock ownership or a foreign picture in which the Distributor or any such subsidiary or affiliated corporation of the Distributor shall have a financial interest shall not be deemed to be a foreign picture

produced by a foreign producer, described in clause (3) above and any such picture shall be included in this agreement.

The Distributor warrants that none of said motion pictures contain or will contain any advertising matter for which compensation is received by the Distributor or any corporation subsidiary to or affiliated with the Distributor.

Assignment Upon Sale of Theatre

Tenth: This agreement shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if the Exhibitor sells or disposes of his interest in the theatre, he may assign this agreement to the purchaser of such interest, without the written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee; such assignment, however, shall not relieve the Exhibitor of liability hereunder, unless the Distributor consents in writing to release the Exh.. tor from such liability. In the event that the Exhibitor shall cease to operate, or shall cease to remain in possession of, the theatre and shall not assign this agreement as herein permitted, the Distributor may, at its election, cancel and terminate this agreement immediately, without waiving or impairing any other right or remedy afforded the Distributor in law or in equity.

Exhibition and Advertising

Eleventh: The Exhibitor agrees to run pictures (excepting "news reels") as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each picture as a "Radio Picture." In all newspaper advertising and publicity issued by the Exhibitor relating to the pictures, the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Unless this agreement expressly provides for the "first run" in the City or Town wherein the theatre is located, the Exhibitor agrees not to advertise any of the pictures by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior

to, and until after the completion of, the exhibition thereof by any other exhibitor having the right of the "first run" or any other prior run thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other agreement with any other exhibitor.

Taxes

Twelfth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Delay In Or Prevention of Performance

Thirteenth: If either the Exhibitor or the Distributor shall be prevented from performing its obligations hereunder with respect to any picture or pictures for causes beyond its direct control, the license in respect of each such picture or pictures shall terminate and revert to the Distributor without liability on the part of either party, provided that the party prevented from performing shall give reasonable written notice of the prevention of performance and the nature of such prevention.

Waiver Verbal Promises; Representations

Fourteenth: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Fifteenth: This agreement is complete and no promise or representations have been made by either party to the other except as set forth herein:

Option To Exclude If Group Licensed

Sixteenth: If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder and unless the Exhibitor is granted other rights to exclude pictures hereunder, the Exhibitor may exclude from this license agreement not to exceed ten (10%) percent of the total number of feature motion pictures licensed hereunder.

Such privilege of exclusion may be exercised only if the Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures within fourteen (14) days after notice of availability of such picture to the Exhibitor.

In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (3).

Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

Acceptance by Distributor

Seventeenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Liquidated Damages, Percentage Bookings

Eighteenth: If the license fee of any picture is to be computed either in whole or in part, upon a percentage of the gross admission receipts of the theatre, and if the Ex-

hibitor fails or refuses to exhibit such picture as provided in this agreement, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit such picture (in addition to any fixed sums payable hereunder in respect of such picture) a sum equal to such percentage of the average daily gross receipts of the theatre during the period of thirty (30) operating days immediately prior to the date or dates when such picture should have been so exhibited, provided, however, that if the Exhibitor shall exhibit such picture for less than the full number of days provided for in this agreement, such sum equal to such percentage shall be computed, upon a sum equal to seventy-five per cent (75%) of the gross receipts of the theatre for the last day of the exhibition thereat of such picture.

Road Shows

Nineteenth: (a) The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such ter-

ritory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect with seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Article First shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license in addition to those which may be excluded as provided in Article First and Sixteenth) one of the other motion

ictures licensed hereunder, but only if the Exhibitor hall give to the Distributor written notice to such effect ot later than fourteen (14) days before the date fixed or the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition f any and all motion pictures excepted and excluded from his license by the Distributor and/or the Exhibitor, as foresaid, when and where desired by the distributor, ree from all claims of the Exhibitor in respect thereof nd the license of each thereof shall forthwith upon exlusion as herein provided terminate and revert to the Distributor.

Additional Pictures

Twentieth: Where any picture is designated in the chedule by the name of a single star or by the name of single director, such designation shall not refer to, and here shall not be included in this agreement because of uch designation, any picture in which such star shall ppear with any other star or stars, whether or not such tars are named in the schedule, nor shall there be included n this agreement because of such designation, any picture vhich may be directed by such director so long as there hall appear in such picture any star or stars.

The Distributor may release, at any time, independently f this agreement, an additional picture or pictures of any tar or stars designated in the schedule (but not more han two of such pictures during the period described in Article First hereof) and nothing in this agreement contained shall be deemed to give the Exhibitor any right to any such additional picture, but any such additional picture, whenever released, may be exhibited and/or licensed for exhibition free of any claim thereto by the Exhibitor, without affecting in any manner the Distributor's obligation to furnish, and the Exhibitor's obligation to accept, any and all of the pictures, as described in the schedule.

Cancellation In Event of Default

Twenty-first: In the event that the Exhibitor shall (a) fail or refuse to exhibit or pay the license fee in respect of any picture, (b) fail or refuse to select or designate a date for the exhibition thereof as in Article Seventh hereof provided, (c) refuse to permit the Distributor or its authorized representative access to the theatre and its box

office for the purpose specified in Article Third hereof, or (d) otherwise default in its obligations hereunder, the Distributor, at its election, may consider any such action or failure to act (hereinafter referred to as a default) as a material breach hereof by the Exhibitor and may, at its election (1) terminate this agreement with respect to pictures not theretofore delivered, (2) withhold the delivery of additional pictures until such default shall be remedied, or (3) if such default shall relate to the payment of the license fees in respect of any picture or pictures, the Distributor may deliver any subsequent picture c.o.d. in an amount sufficient to pay the license fee for such subsequent picture and all previous pictures in respect of which the license fees are delinquent. If the Distributor shall elect to cancel and terminate this agreement, the grant, if any, of the run or clearance in respect of all pictures licensed hereunder shall stand revoked; the license in respect thereof shall revert to the Distributor; and the Distributor may thereafter license to other exhibitors any or all of such pictures.

In the event that the Exhibitor is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or in the event that a receiver, liquidator or trustee is appointed for the affairs of the Exhibitor, the Distributor, at any time thereafter, may terminate this agreement in respect of pictures not theretofore delivered to the Exhibitor hereunder by giving the Exhibitor notice in writing of its election so to do.

The election by the Distributor of any remedy hereunder shall not be deemed an election of such remedy in connection with any other default of the Exhibitor nor shall it be deemed as a waiver of any further or additional right or remedy of the Distributor in law or in equity.

Midnight Shows—Consecutive Dates

Twenty-Second: The license herein granted for the number of days specified in the Schedule shall not be deemed to include the right of exhibition at any time during the period prior to six A. M. on the date of first date of exhibition herein provided for, unless this license shall otherwise expressly permit exhibition prior to six A. M. on said date or first exhibition date. Unless this license shall otherwise expressly permit exhibition of each picture on dates which are not consecutive, if the number of dates

of exhibition designated or otherwise agreed upon, as provided herein, are less than the minimum number of days herein specified, this license shall, upon such designation or agreement, be limited to the number of dates so designated or otherwise agreed upon, and in such event the maximum number of days herein specified for any such picture shall be deemed to be reduced accordingly.

Twenty-third: The following Schedule and all of the written and printed parts thereof are a part of this license

(continued on reverse side).

3136 The following is Film License Agreement between Balaban & Katz Corporation and Vitagraph, Inc., dated September 19, 1939, from Pl. Ex. 116:

Endorsed: Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

3137 Season 1939-1940.

Warner Bros. and First National Productions.

Salesman — Contract Number

T. R. Gilliam

Branch

Chicago

Schedule—Twenty-Third: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule

Theatre	Exhibitor	Location of Theatre
See Attached Rider	Balaban & Katz Corp. and Subsidiaries (See Rider)	Chicago, Illinois

Warner Bros. Productions.

Release No.	Sharing Terms Guarantee	Percentage
	"Group I"	
401	18,000.00 & 35%	over 90000.00
	"Group II"	
402	18,000.00 & 35%	over 90000.00
403	18,000.00 & 35%	over 90000.00
404	18,000.00 & 35%	over 90000.00

Plaintiffs' Exhibit No. 116.

First National Productions.

Release No.	Sharing Terms Guarantee	Percentage
	"Group I"	
451	18,000.00 &	35% over 90000.00
	"Group II"	
452	18,000.00 &	35% over 90000.00
453	18,000.00 &	35% over 90000.00
454	18,000.00 &	35% over 90000.00

Trailers	No. Consecutive Days	Rental Per Trailer
20 De Luxe 28 Regular		

Group	No. of Motion Pictures	To Be Exhibited on the Preferred Days Indicated Below
I	2	
II	6	
III	12	
IV	16	
V	12	

Exhibitor agrees to exhibit on the preferred playing time herein indicated the number of pictures of each group here specified and Distributor shall have the right to designate the motion pictures to constitute the number to be so exhibited.

Additional Terms:

Rider attached to and made a part of this contract.

Distributor may designate any production listed hereon to play at the terms specified in place of any production specified.

Playing Arrangement:

See attached rider.

Clearance:

See attached rider.

Additional Clauses.

1. Distributor may in its discretion, by giving Exhibitor notice in writing on or before "the available date" of the particular photoplays, interchange the film rental and terms (including the theatre, if more than one theatre is mentioned above, and exhibition dates) of any one or more of the photoplays with the film rental and terms of any other photoplay or photoplays of the same or different brand licensed hereunder, it being understood that the provisions of this paragraph shall include the right of Distributor in its discretion to substitute the film rental and terms, as defined herein, of any motion picture excluded from this license by Exhibitor pursuant to the provisions of Article "Fifteenth" hereof, in place of the film rental and terms of any other photoplay or photoplays of the same or different brand, thereafter made available, by giving Exhibitor notice in writing within fourteen (14) days after the receipt of the written notice specified in said Article of the Exhibitor's election to exclude such motion picture.

2. Admission Prices—The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

Evenings: Adults: Orchestra , Balcony , Children (See rider attached). Matinees: Adults: Orchestra , Balcony , Children (See rider attached):

Unless a greater minimum admission charge is herein specified, the Exhibitor agrees to and shall charge for admission to said theatre during the whole of the licensed exhibition period of each of the motion pictures, an actual admission fee which shall not be less than fifteen cents (15c) for each adult person for each matinee performance and not less than fifteen cents (15c) for each adult person for each evening performance.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture

shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the pictures thereafter deliverable hereunder or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Fourth hereof.

3. Distributor shall have the right to designate the motion pictures to be exhibited at each respective film rental provided for in said Schedule.

4. The license herein granted for the number of days specified in the Schedule shall not include (a) the right of exhibition at any time during said exhibition period prior to 6 A. M. on the date or first date of exhibition provided for unless exhibition prior to 6 A. M. on said date or first exhibition date is expressly granted in writing, (b) any right of exhibition at any time other than on the respective date or dates of exhibition selected, designated or otherwise agreed upon, as provided herein and confirmed in writing by Distributor, nor (c) any right of exhibition other than by means of a print furnished to Exhibitor by Distributor for the express purpose of exhibition hereunder in the theatre or theatres selected, designated, or otherwise agreed upon as herein provided and confirmed in writing by Distributor.

5. In the event that Exhibitor shall violate the provisions of any other agreement between Distributor and Exhibitor for feature photoplays therein agreed to be leased, or shall fail to date, play and pay for the film rental provided for in such other agreement, Distributor may at its option exercise with respect to this agreement all or any of the rights granted Distributor under Paragraph Eighteenth.

6. The Exhibitor agrees that all advertising materials which Exhibitor may lease from the Distributor will be used only in conjunction with the exhibition of the respective motion pictures identified in such materials at the theatre or theatres specified in the schedule, and only for the purpose of properly advertising and exploiting said respective motion pictures at said theatre or theatres, and the Exhibitor agrees not to trade, sublease, sell, give away, nor otherwise use or permit others to use such advertising materials.

7. The parties hereto recognize that the National Appeal Board referred to in Article Twenty-second is not now and may not during the term of this agreement be in existence. It is agreed, therefore, that until the said National Appeal Board shall be organized, the sixth paragraph of said Article shall be deemed to read as follows:

"The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, *to make findings of fact in respect thereof and to direct* specific performance of a contract, and or that the same has been breached in whole or in part, and or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder."

8. Distributor grants the Exhibitor and the Exhibitor accepts a limited license, subject to the terms and conditions of this agreement, under the respective copyrights of the number of trailers (which term shall be deemed to mean films or prints ordinarily not in excess of one reel in length, designed to advertise and introduce the photoplays licensed hereunder) described in this schedule, and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said trailers and to reproduce for public performance such recorded sound in synchronism therewith, but only at the theatre and for the number of consecutive days specified in this schedule, and for no other use or purpose, on dates to be determined as follows:

In the absence of special provisions for special dates agreed upon in this schedule, Exhibitor agrees to commence the first exhibition of each of the said trailers seven

(7) days prior to the first exhibition date determined as herein provided of the photoplay to which said trailer relates. Exhibitor agrees to pay Distributor for the rights herein granted with respect to each such trailer, the trailer rental indicated in this schedule therefor, and to make such payment at least five (5) days prior to the first agreed exhibition date of each such trailer, determined as herein provided.

Number of pictures offered: 8
Number licensed: 8

(End of Schedule)

Optional Arbitration Clause — The foregoing Clause Twenty-second is optional with the parties hereto. If it is desired to make such a clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragrph and unless so signed *the said Clause shall be deemed excluded from this license agreement.*

It is agreed by and between the parties that Clause Twenty-second, provided for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

Representative of the Distributor duly authorized to agree to the following Clause Twenty-second.

Exhibitor

In witness whereof Balaban & Katz Corp. & Subsidiaries, the Exhibitor, operating the (see rider) Theatre, located at in the , Chicago Illinois, has on September 19, 1939, executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and condition hereof.

Vitagraph, Inc.
By T. M. Gilliam

(The above signature of Vitagraph, Inc., is made only for the purpose of authenticating this application and is not an acceptance thereof.)

Balaban & Katz Corp. & Subsidiaries

By

Exhibitor.

The foregoing application is hereby accepted.

Vitagraph, Inc.

By

General Manager of Distribution.

Date

3138 Rider: Attached to and made a part of contracts dated September 19, 1939 for the theatres specified herein covering First National productions and/or Warner Brothers productions for the season 1939-1940.

The Exhibitor agrees to pay eight (8) productions except as noted below,* to be designated by the Distributor, prior to first run exhibition in Chicago, Illinois, from the feature releases of 1939—1940 in each of the following theatres for the number of days specified herein and at the minimum admission prices specified herein.

* It is agreed that in the event any of the eight (8) productions designated by the Distributor are First National productions, that such productions are to be eliminated in the Central Park Theatre, Chicago; the Berwyn Theatre, Berwyn; and the Terminal Theatre, Chicago and that such elimination will in no way effect the guarantee of $18,000.00 nor will it effect the $90,000.00 gross figure, over which the Distributor is to participate

Corporation	Theatre	No. Days	Admission Prices —Matinee— Adults	Child.	—Evening— Adults	Child.
Balaban & Katz Corp.	Uptown	7	30¢	15¢	50¢	15¢
Balaban & Katz Corp.	Marbro	7	30¢	15¢	50¢	15¢
Balaban & Katz Corp.	Granada	7	30¢	15¢	50¢	15¢
Theatre Amusement Co.	Harding	7	30¢	15¢	50¢	15¢
Balaban & Katz Corp.	Varsity—Evanston	7	30¢	15¢	50¢	15¢
Balaban & Katz Corp.	Riviera—(optional)	7	30¢	15¢	50¢	15¢
Balaban & Katz Corp.	Paradise	4/7	25¢	10¢	40¢	10¢
Theatre Amusement Co.	Belmont	4/7	25¢	10¢	40¢	10¢
Theatre Amusement Co.	Century	4/7	25¢	10¢	40¢	10¢
Theatre Amusement Co.	Congress	4/7	25¢	10¢	40¢	10¢
Balaban & Katz Corp.	Gateway	4/7	25¢	10¢	40¢	10¢
Balaban & Katz Corp.	Norshore	4/7	25¢	10¢	40¢	10¢
Balaban & Katz Corp.	Nortown	4/7	25¢	10¢	40¢	10¢
Balaban & Katz Corp.	Pantheon	4/7	25¢	10¢	40¢	10¢
Balaban & Katz Corp.	Tower	4/7	25¢	10¢	40¢	10¢
Balaban & Katz Corp.	Senate	4/7	25¢	10¢	40¢	10¢
Balaban & Katz Corp.	Biltmore	3/5	20¢	10¢	30¢	10¢
Theatre Amusement Co.	Crystal	3/5	20¢	10¢	30¢	10¢
Balaban & Katz Corp.	Manor	3/5	20¢	10¢	30¢	10¢
Balaban & Katz Corp.	Maryland	3/5	20¢	10¢	30¢	10¢
Theatre Amusement Co.	State	3/5	20¢	10¢	30¢	10¢
Theatre Amusement Co.	La Grange—La Grange	3/5	20¢	10¢	30¢	10¢
		3/5	20¢	10¢	30¢	10¢

Balaban & Katz Corp.	Terminal	3/5	20¢	10¢	30¢	10¢
Theatre Amusement Co.	Berwyn—Berwyn	3/5	20¢	10¢	30¢	10¢
Balaban & Katz Corp.	Central Park	3/5	20¢	10¢	30¢	10¢
Lund Theatre Corp.	Tivoli—Downers Grove	3/5	20¢	10¢	30¢	10¢
Theatre Amusement Co.	Lakeside	2/4	15¢	10¢	25¢	10¢
Balaban & Katz Corp.	Will Rogers	2/4	15¢	10¢	25¢	10¢
Balaban & Katz Corp.	Belpark	2/4	15¢	10¢	25¢	10¢
Balaban & Katz Corp.	Valencia—Evanston	2/4	15¢	10¢	25¢	10¢
Northern Amusement Co.	Cine'	2/4	15¢	10¢	25¢	10¢
Theatre Amusement Co.	Covent	2/4	15¢	10¢	25¢	10¢
Theatre Amusement Co.	Alba—(optional)	2/4	15¢	10¢	25¢	10¢
Theatre Amusement Co.	Luna	2/4	15¢	10¢	20¢	10¢
Balaban & Katz Corp.	Park—La Grange	2/4	15¢	10¢	20¢	10¢
Balaban & Katz Corp.	Coronet—Evanston	2/4	15¢	10¢	20¢	10¢
Iris Amusement Co.	Iris—(optional)	2/4	15¢	10¢	20¢	10¢

and for each production the Distributor is to receive a guarantee of $18,000.00 and 35% over the accumulated gross receipts of $90,000.00.

3139 Exhibitor further agrees that in addition to the eight (8) productions specified hereinbefore, to play sufficient number of feature productions listed herein at the terms and theatres specified hereinafter to total a minimum of $150,000.00.

Corporation	Theatre	No. of Days	Rental per Feature
Balaban & Katz Corp.	Uptown	7	$2100.00
Balaban & Katz Corp.	Marbro	7	1550.00
Balaban & Katz Corp.	Granada	3/4	525.00
Theatre Amusement Co.	Harding	3/4	525.00
Balaban & Katz Corp.	Varsity—Evanston	7	420.00
Balaban & Katz Corp.	Riviera	3/4	425.00
Balaban & Katz Corp.	Paradise	3/4	525.00
Theatre Amusement Co.	Belmont	3/4	180.00
Theatre Amusement Co.	Century	3/4	315.00
Theatre Amusement Co.	Congress	3/4	140.00
Balaban & Katz Corp.	Gateway	3/4	200.00
Balaban & Katz Corp.	Norshore	3/4	230.00
Balaban & Katz Corp.	Nortown	3/4	175.00
Balaban & Katz Corp.	Pantheon	3/4	150.00
	(except if repeat on Riviera—		130.00)
	(or if repeat on Uptown—		110.00)
Balaban & Katz Corp.	Tower	3/4	350.00
Balaban & Katz Corp.	Senate	3/4	185.00
Balaban & Katz Corp.	Biltmore	3/4	75.00
Theatre Amusement Co.	Crystal	3/4	110.00
Balaban & Katz Corp.	Manor	3/4	95.00
Balaban & Katz Corp.	Maryland	3/4	160.00
Theatre Amusement Co.	State	3/4	190.00
Theatre Amusement Co.	La Grange—La Grange	3/4	85.00
Balaban & Katz Corp.	Terminal	3/4	175.00
Theatre Amusement Co.	Berwyn—Berwyn	3/4	190.00
Balaban & Katz Corp.	Central Park	3/4	185.00
Lund Theatre Corp.	Tivoli—Downers Grove	3/4	47.50
Theatre Amusement Co.	Lakeside	1/3	65.00
	(except repeat on Pantheon—		45.00)
Balaban & Katz Corp.	Will Rogers	2/4	110.00
Balaban & Katz Corp.	Belpark	2/4	95.00
Balaban & Katz Corp.	Valencia—Evanston	2/3	65.00
Northern Amusement Co.	Cine'	2/3	42.50
Theatre Amusement Co.	Covent	2/3	85.00
	(except repeat on Century—		55.00)
Theatre Amusement Co.	Alba	2/3	26.50
Theatre Amusement Co.	Luna	2/3	25.00
Balaban & Katz Corp.	Park—La Grange	1/2	15.00
Balaban & Katz Corp.	Coronet—Evanston	2/3	30.00
Iris Amusement Co.	Iris	2/3	25.00

The minimum admission price on all productions played under this contract is to be the same as the minimum admission price specified hereinbefore.

The Distributor hereby grants to the Exhibitor the following playing arrangement and clearance:

Playing arrangement and clearance for each individual theatre is as follows:

Alba

To play in second week of Chicago City release.

Clearance:

Home, New Albany, Revue Theatres shall not play prior to the second week of Chicago City release.

Belmont

To play during "E" weeks of Chicago City release.

Clearance:

Congress, Pantheon, Sheridan, Century, Norshore, Nortown, Esquire Theatres shall not play prior to "B" weeks of Chicago City release.

Covent, North Center, Buckingham Theatres shall not play prior to "C" week of Chicago City release.

Bertha, Davis, Biograph, (Rosewood or Bugg), (Julian or Vic) Theatres shall not play prior to first week of Chicago City release.

(Bugg or Rosewood), Lincoln Hippodrome, Easterly, Hollywood, City Theatres shall not play prior to the 2nd week of Chicago City release.

3140 Belpark

To play during the first week of Chicago City release.

Clearance:

Will Rogers, Rivoli, Drake, Patio, Embassy, Irving, Milford, Portage Park, Admiral shall not play prior to the first week of Chicago City release.

Luna, Karlov, Revue, Dale shall not play prior to the second week of Chicago City release.

New Home shall not play prior to the third week of Chicago City release.

Berwyn, Berwyn

To play during "C" week of Chicago City release.

Clearance:

Tivoli Theatre, Downers Grove, Illinois, State Theatre, Chicago, Illinois, La Grange Theatre, La Grange, Illinois shall not play prior to "C" week of Chicago City release.

Ritz, Roxy and Oakwyn Theatres, Berwyn, Illinois, Villas, Annetta and Palace Theatres, Cicero, Illinois shall not play prior to the first week of Chicago City release.

Hawthorne and Town Theatres, Cicero, Illinois, Southern Theatre, Oak Park, Illinois shall not play prior to the second week of Chicago City release.

Biltmore

To play in "C" week of Chicago City release.

Clearance:

Crystal and Crown Theatres shall not play prior to "C" week of Chicago City release.

Grand (North Avenue), Alvin, Oakley, Hub Theatres shall not play prior to the first week of Chicago City release.

Harmony, Vision, Queen, Chopin, Royal, Oak, New Strand, Paulina and Banner Theatres shall not play prior to second week of Chicago City release.

Bell and Webster Theatres shall not play prior to the third week of Chicago City release.

Central Park

To play during "C" week of Chicago City release.

Clearance:

Atlantic, Broadway Strand and Marshall Square Theatres shall not play prior to "C" week of Chicago release.

Homan, White Palace, Crawford, California, Joy, Douglas Theatres shall not play prior to first week of Chicago City release.

Kedzie, Kedzie Annex, Gold, Circle, 20th Century, Lexington, Lawndale, Lyric, and Lindy Theatres shall not play prior to the second week of Chicago City release.

Road, Harrison, and Alex Theatres shall not play prior to third week of Chicago City release.

Century

To play during "E" weeks of Chicago City release.

Clearance:

Pantheon, Nortown, Belmont, Sheridan, Esquire and Norshore Theatres shall not play prior to "B" weeks of Chicago City release.

Windsor, Vogue, Covent, Buckingham Theatres shall not play prior to "C" week of Chicago City release.

Vic, Mode, Lane Court, Music Box, Biograph Theatres shall not play prior to first week of Chicago City release.

Hollywood, Claremont, Lakeshore, Easterly, City, Ideal, Lincoln Hippodrome and Plaza Theatres shall not play prior to the second week of Chicago City release.

Parkway Theatre shall not play prior to the third week of Chicago City release.

3141 Cine

To play during first week of Chicago City release.

Clearance:

Ridge Theatre shall not play prior to first week of Chicago City release.

Congress

To play during "B" weeks of Chicago City release.

Clearance:

No theatres, except the Harding, Belmont in the section bounded on the south by Chicago Avenue, on the north by Irving Park Blvd., on the West by Cicero Avenue and the East by Halsted Street shall play prior to "C" week of Chicago City release.

Gateway and Belmont Theatres shall not play prior to "B" week of Chicago City release.

Oakley, Alvin, Milford, Embassy, Grand (North Ave.), Belpark, Portage Park, and Admiral Theatres shall not play prior to the first week of Chicago City release.

Revue, Fox, Avaloe, Reo, Chopin, Avon, Harmony, Vision, Queen, Paulina, Banner, Oak, Rogers, New Strand, Royal, Dale, and Armitage Theatres shall not play prior to the second week of Chicago City release.

Ben & Webster shall not play prior to third week of Chicago City release.

Covent

To play during "C" week of Chicago City release, on pictures clear of the Century Theatre. To play during first week of Chicago City release following the Biograph on pictures repeat on the Century Theatre, providing the Biograph plays prior to Sunday of first week of Chicago City release.

Clearance:

Mode, Vic, Lane Court, Biograph, Music Box shall not play prior to the first week of Chicago City release.

Claremont, Lakeshore, Lincoln Hippodrome, Hollywood, Plaza Theatres shall not play prior to the second week of Chicago City release.

New Parkway, Ideal Theatres shall not play prior to the third week of Chicago City release.

Cristal

To play during "C" week of Chicago City release.

Clearance:

Biltmore and Crown Theatre shall not play prior to "C" week of Chicago City release.

Grand (North Avenue), Oakley, Hub, Alvin, Logan Theatres shall not play prior to the first week of Chicago City release.

New Strand, Vision, Harmony, Rogers, Oak, Avon, Queen, Reo, Avaloe, Banner, Paulina, Armitage, Royal Theatres shall not play prior to the second week of Chicago City release.

Gateway

To play during "B" weeks of Chicago City release.

Clearance:

Congress Theatre shall not play prior to "B" weeks of Chicago City release.

Terminal Theatre, Chicago, Illinois, theatres in Park Ridge, Illinois shall not play prior to "C" week of Chicago City release.

Metro, Irving, Portage Park, Belpark, Will Rogers Theatres shall not play prior to first week of Chicago City release.

Revue, (Times or Jeff) theatres, shall not play prior to second week of Chicago City release.

3142 Granada

To play during "A" weeks of Chicago City release.

Clearance:

No theatres in the North or Northeast sections of the city of Chicago, except the Riviera, Uptown and Harding Theatres, or in the North or Northern part of Cook County outside the Chicago city limits, except the Varsity Theatre, Evanston, Illinois shall play prior to "E" weeks of Chicago City release. No theatre in Lake County, excepting Waukegan, Ill. to play prior to "B" week of Chicago city release.

Harding

To play during "A" weeks of Chicago City release, following the Marbro Theatre.

Clearance:

No theatre in the North or Northwest section of Chicago excepting the Uptown, Marbro, Riviera, Granada, Paradise Theatres, or in the Northern part of Cook County outside the city limits of Chicago, except the Varsity Theatre, Evanston, Illinois shall play prior to or during the exhibition in this theatre.

Congress and Gateway Theatres shall not play prior to "B" weeks of Chicago City release.

Logan Theatre shall not play prior to first week of Chicago City release.

Dale and Rita Theatres shall not play prior to second week of Chicago City release.

Iris

To play during the third week of Chicago City release.

No clearance.

La Grange, La Grange

To play during "C" week of Chicago City release.

Clearance:

Tivoli Theatre, Downers Grove, Illinois, Berwyn Theatre, Berwyn, Illinois shall not play prior to "C" week of Chicago City release.

Roxy Theatre, Berwyn, Illinois, theatres in Hinsdale, Illinois shall not play prior to first week of Chicago City release.

Theatres in Brookfield, Illinois, Lyons, Illinois and

the Park Theatre in La Grange, Illinois shall not play prior to second week of Chicago City release.

Theatres in Western Springs, Illinois and Riverside, Illinois shall not play prior to third week of Chicago city release.

Lakeside

To play during the first week of Chicago City release.

Clearance:

Deluxe, Mode, Bryn Mawr, Theatres shall not play prior to first week of Chicago City release.

Argmore Theatre shall not play prior to second week of Chicago City Release.

Luna

To play during second week of Chicago City release.

No clearance.

Manor

To play during "C" week of Chicago City release.

Clearance:

State Theatre shall not play prior to "C" week of Chicago City release.

Will Rogers, Iris, Symphony, and Elm Theatres shall not play prior to first week of Chicago City release.

Ambassador, Austin, Plaisance, shall not play prior to second week of Chicago City release.

New Home Theatre shall not play prior to third week of Chicago City release.

3143 Marbro

To play during "A" weeks of Chicago City release.

Clearance:

No theatres on the West Side, Southwest Side or Northwest Side of Chicago, excepting the Harding, Paradise Theatres, or in the Northwestern, Western or Southwestern part of Cook County, Illinois, outside the city limits of Chicago, shall play prior to "B" weeks of Chicago City release.

Senate, Congress, Mont Clare and Gateway Theatres, La Mar Theatre in Oak Park, Illinois shall not play prior to "B" week of Chicago City release. Lido Theatre, Maywood, Ill. not to play prior to "B" week of Chicago city release.

Maryland

To play during "C" week of Chicago City release.

Clearance:

Rhodes, Grove, Jeffrey, Beverly Theatres shall not play prior to "C" week of Chicago City release.

Jackson Park, Lexington, Frolic, Hyde Park, Harper and Hamilton Theatres shall not play prior to first week of Chicago City release.

Jefferson, Plaisance, Ann, Park Manor, (Drexel or Midway), (Woodlawn or Kimbark) shall not play prior to second week of Chicago City release.

N.R.A., Langley, (Woodlawn or Kimbark), (Midway or Drexel) shall not play prior to third week of Chicago City Release.

Norshore

To play during "B" weeks of Chicago City release.

Clearance:

Nortown, Belmont, Sheridan, Pantheon, Century, Esquire, shall not play prior to "B" weeks of Chicago City release.

Howard, Devon Theatres shall not play prior to "C" week of Chicago City release.

Valencia and Ridge Theatres shall not play prior to first week of Chicago City release.

Adelphi, Four Hundred Theatres shall not play prior to second week of Chicago City release. Co-Ed Theatre shall not play prior to 2nd week of Chicago City release.

Nortown

To play during "B" weeks of Chicago City release

Clearance:

Belmont, Sheridan, Norshore, Century, Pantheon, Esquire Theatres shall not play prior to "B" weeks of Chicago city release.

Devon Theatres shall not play prior to "C" week of Chicago City release.

Bryn Mawr, Ridge, Calo, Davis, and Ciné shall not play prior to first week of Chicago City release.

Four Hundred, Adelphi Theatres shall not play prior to the second week of Chicago City release.

Pantheon

To play during "B" weeks of Chicago City release.

Clearance:

Esquire, Belmont, Nortown, Sheridan, Norshore, Century Theatres shall not play prior to "B" weeks of Chicago City release.

DeLuxe, Lakeside, Music Box, Mode, Davis, Bertha, Rosewood, Calo, Bryn Mawr Theatres shall not play prior to first week of Chicago City release.

Argmore Theatre shall not play prior to second week of Chicago City release.

3144 Paradise

To play during "B" weeks of Chicago City release, except in the event the following minimum admissions are charged, then may play in "A" weeks of Chicago City releases: Matinee—adults 30¢ children 15¢, Evenings—adults 50¢ children 15¢.

Clearance:

Senate, Gateway, Congress, Mont Clare, Theatres, Chicago, Illinois, Lido Theatre, Maywood, Illinois and La Mar Theatre, Oak Park, Illinois shall not play prior to "B" weeks of Chicago City release.

State Theatre shall not play prior to "C" week of Chicago City release.

Crawford Theatre shall not play prior to first week of Chicago City release.

Park, La Grange

To play during second week of Chicago City release.

No clearance.

Riviera

To play during "A" weeks of Chicago City release.

Clearance:

No theatres in the North or Northwest sections of the city of Chicago, except the Granada, Uptown and Harding Theatres, or in the North or Northern part of Cook County outside the Chicago city limits, except the Varsity Theatre, Evanston, Illinois shall play prior to "B" weeks of Chicago City release. No theatre in Lake County, excepting Waukegan, Ill. to play prior to "B" week of Chicago city release.

Senate

To play during "B" weeks of Chicago City release.

Clearance:

Congress, Gateway, Mont Clare Theatres, Chicago, La Mar Theatre, Oak Park, Lido Theatre, Maywood shall not play prior to "B" weeks of Chicago City release.

Marshall Square, American, Boardway Strand, Central Park, State, Alamo, Crystal Theatres shall not play prior to "C" week of Chicago City release.

Illington, White Palace, Four Star, Crawford, Grand (North Ave.), Hub, Oakley, Alvin, Vivica, West End, Byrd and Douglas Theatres shall not play prior to first week of Chicago City release.

Kedzie, Kedzie Annex, Garfield shall not play prior to the second week of Chicago City release.

State

to play during "C" week of Chicago City release:

Clearance:

Berwyn Theatre, Berwyn, Illinois, Forest Park Theatre, Forest Park, Illinois, Manor Theatre, Chicago and Lake Theatre, Oak Park, Illinois shall not play prior to "C" week of Chicago City release.

Byrd, West End, Symphony, Iris Theatres, Chicago, Oakwyn Theatre, Ritz and Roxy Theatres, Berwyn, Illinois, Annetta Theatre, Cicero, Illinois shall not play prior to the first week of Chicago City release.

Ambassador, Plaisance, Savoy, Avenue, Austin, Park Theatres, Chicago, Illinois, Southern Theatre, Oak Park, Illinois, Hawthorne and Town Theatres, Cicero, Illinois shall not play prior to second week of Chicago City release.

Terminal

To play during "C" week of Chicago City release.

Clearance:

Commodore, Rivoli, Drake, Bertha, Davis, Admiral, Will Rogers, Belpark, Theatres shall not play prior to first week of Chicago City release.

Revue, New Albany, Home, Alba, Metro Theatres shall not play prior to the second week of Chicago City release.

3145 Tivoli—Downers Grove

To play during "C" week of Chicago City release.

Clearance:

Theatres in La Grange, Elmhurst, Wheaton, Illinois shall not play prior to "C" week of Chicago City release.

Theatres in Hinsdale, Naperville, Glen Ellyn, West Chicago and Lombard, Illinois shall not play prior to first week of Chicago City release.

Theatres in Bensonville, Westmont, Illinois shall not play prior to second week of Chicago City release.

Subsequent runs in Downers Grove, Illinois shall not play prior to the third week of Chicago City release.

Tower

To play during "B" weeks of Chicago City release, except in the event the Avalon Theatres plays in "B" week, then to play immediately after the Avalon Theatre.

Clearance:

Regal, Piccadilly and Stratford Theatres shall not play prior to "B" weeks of Chicago City release.

Maryland, Jeffrey, Grove, Rhodes Theatres shall not play prior to "C" week of Chicago City release.

Midway or Drexel, Hyde Park, Hamilton, Frolic, Harper, Lexington, Jackson Park Theatres shall not play prior to first week of Chicago City release.

Drexel or Midway, Kimbark, Park Manor, Jefferson, Plaisance, Ace Theatres shall not play prior to the second week of Chicago City release.

Langley Theatre shall not play prior to the third week of Chicago City release.

Uptown

To play during "A" weeks of Chicago City release.

Clearance:

No theatres in the North or Northwest sections of the city of Chicago, except the Riviera, Granada and Harding Theatres, or in the North or Northwest part of Cook County outside the Chicago City limits, except the Varsity Theatre, Evanston, Illinois shall play prior to "B" weeks of Chicago City release. No theatre in Lake County, Ill., excepting Waukegan, Ill. to play prior to "B" week of Chicago city release.

Varsity, Evanston

To play during "A" weeks of Chicago City release.

Clearance:

Teatro Del Lago, Wilmette, Aleyon Theatre, Highland Park and Deerpath Theatre, Lake Forest, Illinois shall not play prior to "B" weeks of Chicago City release.

Howard Theatre, Chicago, Wilmette Theatre, Wilmette shall not play prior to "C" weeks of Chicago City release.

Valencia and Stadium Theatres, Evanston, Illinois shall not play prior to first week of Chicago City release.

Coronet Theatre, Evanston, Illinois shall not play prior to second week of Chicago City release.

Valencia, Evanston

To play during the first week of Chicago City release

Clearance:

Stadium Theatre, Evanston, Illinois shall not play prior to first week of Chicago City release.

Coronet Theatre, Evanston, Illinois shall not play prior to second week of Chicago City release.

onet, Evanston

To play during second week of Chicago City release.

No clearance.

3146 Will Rogers

To play during first week of Chicago City release.

Clearance:

Elm, Portage Park, Belpark and Patio Theatres shall not play prior to first week of Chicago City release.

Karlov, Luna, Revue and New Home Theatres shall not play prior to the second week of Chicago City release.

Playing position designated under playing arrangement and clearance hereintofore shall be in accordance with the following schedules:

Chicago City Release

"A" weeks—4th, 5th and 6th week after the last day of original Chicago first run exhibition in the Loop.

"B" weeks—7th or 8th week after the last day of original Chicago first run exhibition in the Loop.

"C" week —9th week after the last day of original Chicago first run exhibition in the Loop.

1st week —10th week after the last day of original Chicago first run exhibition in the Loop, or in the event of no Chicago 1st run in the Loop, then as announced by the Distributor.

2nd week —Week immediately following first week as defined above.

3rd week —Week immediately following second week as defined above.

The foregoing rider agreement which is a part of contract dated September 19, 1939 covering first run exhibition, Chicago, Illinois, is hereby accepted.

Vitagraph, Inc.,
By .....
Date .....

Vitagraph, Inc.,
By .....
(The above signature of Vitagraph, Inc., is made only for the purpose of authenticating this application and is not an acceptance thereof.)

Exhibitor (
By (

3147 Warner Bros. and First National Productions—
Season 1939-1940. Exhibition Contract.

Agreement of license under copyright made in one or more counterparts between Vitagraph, Inc., a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor, (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated); party of the second part.

Witnesseth: The parties hereto agree as follows:

License—First: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each such motion picture a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Term and Warranty—Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for a positive print of each of said motion pictures except such as may be excluded as provided

in clauses Fifteenth and Seventeenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver—(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fifteenth hereof, and those which may not be generally released as provided in Clause Seventeenth hereof or if the Distributor shall willfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof if the rental of any such motion picture is to be determined, either in whole or in part a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum: provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment—Third: (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of

the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings—(b) If the rental of any such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and or deductions, to examine all entries relating to such expenditures and or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person

a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceeding or litigation in respect to this license.

Liquidated Damages—Percentage Bookings—(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures: provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five (65%) percent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints—Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show", "try-out", "preview", or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty day period or to pay

the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provision of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor shall constitute the return of such positive print by the Exhibitor.

(f) If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for

such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints—Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sum paid by the Exhibitor for any lost or stolen print, excepting "news reels", upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Date—Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to the prior runs and or clearance granted or hereafter granted by the Distributor to other exhibi-

tors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run—Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Description of Pictures—Eighth: (a) The Distributor shall have and hereby reserves the right in the sole discretion of the Distributor to change the title of any of the said motion pictures, to make changes in, alterations and adaptation of any story, book or play and to substitute for any thereof any other story, book or play. The Distributor also shall have and hereby reserves the right to

change the director, the cast or any member thereof of any of said motion pictures.

(b) The Exhibitor shall not be required to accept for any feature motion picture described in the Schedule as that of a named star or stars, director or named well-known author, book or play, any motion picture of any other star or stars, director, author, book or play nor to accept any other feature motion picture in place of any thereof which in the Schedule is designated "no substitute". The right of rejection conferred on the Exhibitor by this Clause is in addition to the right of exclusion provided in Clause Fifteenth hereof.

(c) The Distributor warrants that none of said motion pictures are reissues of old negatives, old negatives retitled, excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor. Distributor also warrants that such of said motion pictures as may be foreign produced will be produced with an American star in the English language by a producer affiliated with Distributor and directed by an American director.

Advertising Prior to First Run—Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and excluded from the license until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the

right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor, unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance By Distributor—Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located west of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing—Eleventh: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served provided such change or modification does not change or modify the run, and or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

Assignment On Sale of Theatre—Twelfth: This license shall not be assigned by either party without the written

consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligation of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Taxes—Thirteenth: The Exhibitor shall pay to the Distributor upon demand any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and or the exhibition of prints of motion pictures and or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance—Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Option To Exclude If Group Licensed—Fifteenth: (a) If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder and the license fees of all thereof average not more than Two hundred and fifty ($250.00) Dollars, the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten (10%) percent of the

total number of feature motion pictures licensed hereunder; provided that the Exhibitor

(1) Is not in default hereunder, and

(2) Shall have fully complied with all of the provisions, if any, set forth in this agreement for the exhibition of such feature motion pictures at specified intervals.

(b) Such privilege of exclusion may be exercised only upon the following terms and conditions:

(1) The Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures within fourteen (14) days after the general release date thereof in the exchange territory out of which the Exhibitor is served.

(2) The Exhibitor may exclude without payment therefor one (1) motion picture out of each group of ten (10) of the number of feature motion pictures specified in this license agreement provided the Exhibitor has paid for the other nine (9) of such group.

(3) If such privilege of exclusion is not exercised as provided in paragraph (b) (2) above, the Exhibitor may nevertheless exercise such privilege by paying the license fee of each motion picture excluded with the notice of its exclusion. In such case, such payment shall be credited against such tenth or succeeding tenth motion picture, as the case may be, which the Exhibitor would otherwise be privileged to exclude as provided in paragraph (b) (2) above.

If the only or last group licensed is less than ten (10) and more than five (5) motion pictures, the privilege to exclude shall apply provided the Exhibitor has paid for all motion pictures but one in such group.

(c) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, or to comply with any arbitration award in respect thereto, the privilege of exclusion forthwith shall be revoked and the Exhibitor shall be liable for and pay to the Distributor the license fees of all motion pictures theretofore excluded.

(d) If the license fee of any feature motion picture specified in this license agreement is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, such license fee (for the purpose of

computing the average license fee of all the motion pictures licensed) shall be determined as follows:

(1) Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the Exhibitor's theatre during the period of one year prior to the term of this license agreement.

(2) If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theatre during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

(e) If the rental of any motion picture excluded is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (b) (3) hereof shall be determined as follows:

(1) Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) day period preceding the Exhibitor's notice of exclusion, and apply to such average the percentage terms specified in this license agreement for the Picture excluded.

(2) If no feature motion pictures of the Distributor were exhibited at the Exhibitor's theatre during said ninety (90) day period, average the daily gross receipts of the Exhibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

First Run Exhibitions—Sixteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of

each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Second Run Exhibitions—(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions—(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs—(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance—(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraph (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such fea-

ture motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to September 1, 1933, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Pictures Not Generally Released—Seventeenth: If any of the said motion pictures described in the Schedule, excepting those, if any, which may be roadshown by the Distributor shall not be generally released by the Distributor for distribution in the United States during the period beginning September 1, 1939, and ending August 31, 1940, each such motion picture shall be excluded from this license, upon written notice to such effect given to the Exhibitor by the Distributor prior to fifteen (15) days before the end of said period, unless the Exhibitor shall give written notice to the Distributor not later than thirty (30) days after the end of said period that the Exhibitor elects to exhibit hereunder all such motion pictures if generally released during the year immediately following the end of said period. If such notice of election is given as aforesaid the Distributor shall deliver and the Exhibitor shall exhibit each of such motion pictures upon the terms and conditions of this license excepting that any thereof which are not so generally released within the said following year shall also be excepted and excluded from this license. In such case the Distributor may exhibit and license for exhibition each of such motion pictures so excluded when and where desired by the Distributor and all claims of the Exhibitor in respect thereof are hereby expressly waived and the Distributor released and discharged therefrom by the Exhibitor.

Remedies For Breach—Eighteenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor

shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an instrument for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option. (1) Terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and or otherwise provided for in this license agreement.

Cutting Or Alteration of Prints—Nineteenth: The Exhibitor shall exhibit each print in its entirety, and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor however may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Midnight Shows—Twentieth: The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked date of exhibition without securing express written permission hereunder.

Roadshows—Twenty-first: (a) The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow", at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for

evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each of both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibitions and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the ex-

ception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license, as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement, specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clauses Fifteenth and Seventeenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Arbitration—Twenty-second: The Exhibitor and the Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration to an Arbitration Board (hereby expressly waiving the oath of the arbitration) which shall consist of four members, each

of whom shall be engaged in the motion picture business and two of whom to be appointed by the Exhibitor, and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration or any dispute or controversy arising hereunder, the party making such request shall name therein two arbitrators stating the business address and business or business connection of each and shall designate therein the date, time and place of the hearing of such controversy. The date of such hearing shall not be earlier than seven (7) days from the date of the sending of such notice, unless it shall be claimed in such notice that irreparable injury will result unless there is a speedy determination of such controversy in which case such hearing may be designated to be held earlier than said seven (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall name two arbitrators in a written notice mailed or delivered to the other party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses to name the arbitrators as herein provided or if any arbitrator so named shall fail or refuse to act, or be unable to serve or shall be challenged and others are or another arbitrator qualified and then available to act is not then appointed, others or another arbitrator may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect and any member having such interest shall be disqualified to act.

If the arbitrators or a majority of them are unable to reach a decision, then they, or a majority of them shall immediately select an umpire who shall not be engaged in the motion picture business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall be had before the umpire alone, the arbitrators not to be permitted to attend the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, the American Arbitration Association shall be requested to make such selection.

The Arbitration Board shall have general power to

determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and or that the same has been breached in whole or in part, and or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder; provided that if after a full hearing of any controversy submitted for arbitration hereunder, excepting any submission to an umpire designated as hereinabove provided, the arbitrators or a majority of them are of the opinion that because of unusual circumstances arising after the execution of this license agreement and beyond the direct control of the parties hereto disclosed at such hearing, a strict enforcement of the provisions of this license agreement would impose undue hardship upon one of the parties, the arbitrators or a majority of them may recommend in writing to the parties a settlement of such controversy upon such terms and conditions deemed by the arbitrators fair and just. If such settlement is not agreed to by the parties within five (5) days after the receipt of a copy of such recommendation, the controversy shall be deemed withdrawn from the arbitrators and shall be submitted with a written statement of all the facts adduced at the hearing before the arbitrators together with all documentary evidence to the National Appeal Board in New York. The disposition by the National Appeal Board of any such recommendation shall be final and binding upon the parties hereto.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a state in which such hearing would otherwise not be had, for an order to proceed to arbitrate in which case such hearing shall be had in such place as the court to which supplication is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators,

or a majority of them and consent that any such decision or award shall be enforceable in or by any Court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of an arbitration Board in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal; and the Exhibitor shall have the rights and remedies provided in Clause Second (b) for failure to deliver motion pictures.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party to this or any other existing agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

Exhibition Contract Continued on Page Two

3148 PLAINTIFF'S EXHIBIT 118.

Filed Oct. 11, 1944.

Twentieth Century Fox Film Corp.

Chicago, Illinois
July 15, 1936

Warner Bros. Circuit Management Corp.

Schedule of Clearance—1936-37.

In conjunction with contracts signed this day, July 15, 1936, for Feature and Short Subject product of Twentieth Century-Fox Film Corporation, it is agreed herewith that the following admission and clearance schedule will prevail throughout the term of said contracts.

The Exhibitor agrees through the term of the contract to maintain the following minimum admission schedule for Period of Release played:

City of Chicago and Suburban Release Schedule:

First Period Release: Loop First Run excepting those theatres playing first run loop Chicago in the Third and Fourth period.

Second Period Release: 21 days. Minimum adult admission per person 30¢ Matinee until 6:30 P. M.; after 6:30 P. M. 50¢.

Third Period Release: 16 days. Minimum adult admission per person 25¢ Matinee until 6:30 P. M.; after 6:30 P. M. 40¢.

Fourth Period Release: 14 days. Minimum adult admission per person 20¢ Matinee until 6:30 P. M.; after 6:30 P. M. 30¢.

Fifth Period Release: 14 days. Minimum adult admission per person 15¢ Matinee until 6:30 P. M.; after 6:30 P. M. 25¢.

Sixth Period Release: 14 days. Minimum adult admission per person 15¢ Matinee until 6:30 P. M.; after 6:30 P. M. 20¢.

Seventh Period Release: 14 days. Minimum adult admission per person 15¢ Matinee until 6:30 P. M.; after 6:30 P. M. 20¢

Minimum admission for Children at all times to be not less than 10¢ per person.

Note:—Second Period Release to start not later than twenty two days following last day's engagement in the Loop; excepting those attractions playing extended run engagements, and in which instances will follow not later than twenty seven days following last day's engagements in the loop.

Each period in numerical order is for the duration of the number of days indicated.

Avalon

May play in second period release seven days following Tivoli, day date with Southtown, or in event photoplay not played Tivoli, may play day and date with Southtown. Photoplays not played Tivoli or Southtown may play in second period. Clearance on all other south-side theatres, excluding Tivoli and Southtown, and including Theatres in the southern part of Cook County, Illinois, Gary, Hammond, and Indiana Harbor, Indiana. No other theatres in this prescribed territory to play earlier than third period release which is established on southside as follows: If first run south side theatre plays in fourth week after Loop showing, fourteen days after last day; if first run south side theatre plays in fifth week after loop showing, fourteen days after last day. If first run south side theatre plays in sixth week after loop showing, seven days. No theatre other than Piccadiily, Stratford, Tower, Capitol, Metropolitan, and Regal to play in third period release. Hammond, Gary, may play immediately following first run south side in second period.

Grove

To play in fourth period of Release. Shore may play in fifth period of release; Park Manor and Burnside may play in seventh period of release; Ray in eighth period of Release.

Hamilton

To play in sixth period of release. Ray and Stanley to play in eighth period of release.

Jeffery

To play in fourth period of release. Commercial may play in fourth period of Release; Shore and Jackson Park

in fifth period of release; Chelten and Hamilton in sixth period of Release; Ray and Stanley in eight period of release.

3149 Shore

To play in fifth period of release. Jackson Park May play in fifth period of release; Chelton and Hamilton in sixth period of release; Ray and Stanley in eight period of release.

This 15th day of July, 1936.

Twentieth Century Fox Film Corp.
By: C. W. Eckhardt,
Br. Mgr.
Warner Bros. Circuit Management Corp.
By Alex Halperin

Chicago, Ill.
June 21, 1937

Twentieth Century-Fox Film Corporation.

Warner Bros. Circuit Mgt. Corporation.

Schedule of Clearance—Season 1937-38.

In conjunction with contracts signed this day, June 21st, 1937, for Feature product of Twentieth Century-Fox Film Corporation, it is agreed herewith that the following admission and Clearance Schedule will prevail throughout the terms of said contract.

The Exhibitor agrees through the term of the contract to maintain the following minimum admission for Week of Releases played:

"A" Prerelease Week: Minimum adult admission per person 30¢ Matinee until 6:30 P. M.; after 6:30 P. M. 50¢.

"B" Prerelease Week: Minimum Adult Admission per person 25¢ Matinee until 6:30 P. M.; after 6:30 P. M. 40¢.

"C" Prerelease Week: Minimum adult admission per person 20¢ Matinee until 6:30 P. M.; after 6:30 P. M. 30¢.

First Week General Release: Minimum adult admission per person 15¢ Matinee until 6:30 P. M.; after 6:30 P. M. 25¢.

Second and Third Week General Release: Minimum adult admission per person 15¢ Matinee until 6:30 P. M.; after 6:30 P. M. 20¢ per person.

Minimum admission for Children at all times to be not less than 10¢ per person.

It is mutually agreed evening admission price shall prevail for all performance on Sundays and Legal Holidays.

Avalon

The Avalon may play in "A" Prerelease Week seven days following Tivoli, day and date with Southtown, or in the event photoplays not played Tivoli, may play day and date with Southtown. Photoplays not played Tivoli or Southtown, may play in Fourth, Fifth or Sixth Week following First Run Loop engagement. Clearance on all other southside theatres, excluding the Tivoli and Southtown, and including theatres in Southern part of Cook County, Gary, Hammond and Indiana Harbor, Indiana. No other theatre in this prescribed territory to play earlier than "B" Prerelease Week which is as follows: If first southside "A" Prerelease theatre plays in Fourth Week after Loop showing, fourteen days after last day; if first southside "A" Prerelease theatre plays in Fifth Week after Look showing, fourteen days after last day; if first southside "A" Prerelease theatre plays in Sixth Week after Loop showing, seven days. No theatre other than Picadilly, Stratford, Tower, Capitol, Metropolitan and Regal to play in "B" Prerelease Week. Hammon and Gary, Indiana may play immediately following "A" Prerelease run. Established "C" Prerelease theatres to play in Ninth Week following Loop First Run, and established general First Week Release theatres to play in Tenth Week after Loop First Run.

Grove

"C" Week of Chicago Release. State in Roseland, and Jeffery to play Prerelease "C" Chicago Release. Shore to play First Week General Release. Park Manor and Burnside to play Third Week General Release. Ray and Stanley to play Fourth Week General Release.

Hamilton

Second Week of Chicago General Release. Ray and Stanley to play Fourth Week of General Release.

Jeffery

Prerelease "C" Chicago Release. Commercial, Shore and Jackson Park to play in First Week of Release. Chel-

ten and Hamilton to play in Second Week of Release. Ray and Stanley to play in Fourth Week of General Release. Commercial may play in "C" Prerelease Week if 30¢ adult admission is charged.

3151 Shore

First week Chicago General Release. Chelten and Hamilton to play in Second Week of General Release. Ray and Stanley to play in Fourth Week of General Release. Jackson Park to play in First Week of Release.

3152 Twentieth Century Fox Film Corporation.

August 11, 1938

Warner Bros. Circuit Management Corporation.

Schedule of Clearance & Admission—Season 1938-39.

Admission Price Schedule: Same as 1937-38.

Avalon

The Avalon may play in "A" Prereleaes Week seven days following Tivoli, day and date with Southtown, or in the event photoplays not played Tivoli, may play day and date with Southtown. Photoplays not played Tivoli or Southtown, may play in Fourth, Fifth or Sixth Week following First Run Loop engagement. Clearance on all other Southside theatres, excluding the Tivoli and Southtown, and including theatres in Southern part of Cook County, Gary, Hammond and Indiana Harbor, Indiana. No other theatre in this prescribed territory to play earlier than "B" Prerelease Week which is as follows: if first Southside "A" Prerelease theatre plays in Fourth Week after Loop showing, fourteen days after last day; if first Southside "A" Prerelease theatre plays in Fifth Week after Loop showing, seven days after last day. If first Southside "A" Prerelease theatre plays in Sixth Week after Loop showing, to have Clearance only. No theatre other than Picadilly, Stratford, Tower, Capitol, Metropolitan and Regal to play in "B" Prerelease Week. Hammond and Gary, Indiana, may play immediately following "A" Prerelease run. Established "C" Prerelease theatres to play

in Ninth Week following Loop First Run, and established general First Week Release theatres to play in Tenth Week after Loop First Run.

Grove
Same as 1937-38

Hamilton
Same as 1937-38

Jeffery
Same as 1937-38

Shore
Same as 1937-38

3153 Twentieth Century Fox Film Corporation

August 21st, 1939

Warner Bros. Circuit Management Corporation.

Schedule of Clearance & Admission—Season 1939-40.

Admission Price Schedule Same as 1937-38

Avalon
The Avalon may play in "A" Prerelease Week seven days following Tivoli, day and date with Southtown, or in the event photoplays not played Tivoli, may play day and date with Southtown. Photoplays not played Tivoli or Southtown, may play in Fourth, Fifth or Sixth Week following First Run Loop engagement. Clearance on all other Southside theatres excluding the Tivoli and Southtown, and including theatres in Southern part of Cook County, Gary, Hammond and Indiana Harbor, Indiana. No other theatre in this prescribed territory to play earlier than "B" Prerelease Week. Hammond and Gary, Indiana may play immediately following "A" Prerelease run. No other theatre than Piccadilly, Stratford, Tower, Capitol, Metropolitan, Regal, to play in "B" Prerelease week. Tower Theatre, Chicago, Ill., may play "A" Prerelease.

Grove
Same as 1937-38

Hamilton
Same as 1937-38

Jeffery

This theatre to play in Pre-release "C" Chicago Release.

Not to Play Prior to "C" Prerelease	Not to Play Prior to First Week	Not to Play Prior to Second Week	Not to Play Prior to Fourth Week
Commercial	Shore Jackson-Park	Chelton Hamilton	Ray Stanley

Shore

Same as 1937-38

Warner Bros. Circuit Management Corporation

By Alex Halperin (Signed)

Twentieth Century Fox Film Corporation

By C. W. Eckhardt,

Manager

Twentieth Century Fox Film Corporation

September 8th, 1940

Warner Bros. Circuit Management Corporation

Schedule of Clearance & Admission—Season 1940-1941.

Admission Price Schedule: Same as 1937-38.

Avalon

Same as 1939-40

Grove

Same as 1937-38

Hamilton

Same as 1937-38

Jeffery

Same as 1939-40

Shore

Same as 1937-38

Warner Bros. Circuit Management Corporation

By Alex Halperin (Signed)

Twentieth Century-Fox Film Corporation

By Herman Wobber

Twentieth Century Fox Film Corporation

September 2, 1941

Warner Bros. Circuit Management Corporation

Schedule of Clearance and Admissions—Season 1941-42

Admission Price Schedule: Same as 1937-38

Avalon
Same as 1939-40

Grove
Same as 1937-38

Hamilton
Same as 1937-38

Jeffery
Same as 1939-40

Shore
Same as 1937-38

Warner Bros. Circuit Management Corporation
By Alex Halperin (Signed)

Twentieth Century-Fox Film Corporation
By Herman Wobber

Twentieth Century Fox Film Corporation

October 12, 1942

Warner Bros. Circuit Management Corporation

Schedule of Clearance & Admission

Season 1942-43

Admission Price Schedule: Same as 1937-38

Avalon
Same as 1939-40

Grove
Same as 1937-38

Hamilton:
Same as 1937-38

Jeffery
Same as 1939-40

Shore
Same as 1937-38

Warner Bros. Circuit Management Corporation
By Alex Halperin

Twentieth Century Fox Film Corporation
By T. J. Connors

Twentieth Century Fox Film Corporation

November 17, 1943

Warner Bros. Circuit Management Corporation

Schedule of Clearance & Admissions—Season 1943-44

Admission Price Schedule: Same as 1937-38

Avalon
Same as 1939-40

Grove
Same as 1937-38

Hamilton
Same as 1937-38

Jeffery
Same as 1939-40

Shore
Same as 1937-38

Warner Bros. Circuit Management Corporation
By Alex Halperin

Twentieth Century Fox Film Corporation
By T. Gilliam

3158 Paramount Pictures Dist. Corp. November 15, 1937
Chicago, Illinois

Endorsed: Filed October 11, 1944. Roy H. Johnson, Clerk.

Warner Bros. Circuit Management Corp.

Clearance Schedule—1936-37.

Avalon:

The Avalon may play in "A" Prerelease week seven days following the Tivoli, date and date with the Southtown, or in the event photoplays not played Tivoli, may play day and date with Southtown. Photoplays not played Tivoli or Southtown, may play in fourth, fifth or sixth week, following first run loop engagement. Clearance on all other south side theatres, excluding the Tivoli and Southtown, and including theatres in Southern part of Cook County, Gary, Hammond and Indiana Harbor, Indiana. No other theatre in this prescribed territory to play earlier than "B" prerelease week which is as follows: If first Southside "A" Prerelease theatre plays in fourth week after loop showing, fourteen days after last day; if first Southside "A" prerelease theatre plays in fifth week after loop showing, seven days after last day. If first Southside "A" prerelease theatre plays in sixth week after loop showing, to have clearance only. No theatre other than Piccadilly, Stratford, Tower, Capitol, Metropolitan, and Regal to play in "B" Prerelease week. Hammond and Gary, Indiana may play immediately following "A" prerelease run. Established "C" prerelease pictures to play in ninth week following loop first run, and established general firstweek release theatre to play in tenth week after loop first run.

Grove:

"C" week of Chicago Release. State, in Roseland and Jeffery in Chicago to play prerelease "C" Chicago Release. Shore to play first week general release. Park Manor and Burnside to play third week general release. Ray and Stanley to play fourth week general release.

Hamilton:

Second week of Chicago general release. Ray and Stanley to play fourth week of general release.

Jeffery:

Prerelease "C" Chicago Release. Commercial, Shore and Jackson Park to play in first week of release. Chelten and Hamilton to play in second week of release. Ray and Stanley to play in fourth week of general release. Commercial may play in "C" prerelease week if 30c adult admission is charged.

Shore:

First week Chicago General release. Chelten and Hamilton to play in second week of general release. Ray and Stanley to play in fourth week of general release. Jackson Park to play in first week of general release.

Warner Bros. Circuit Management Corp.
By: .....

Paramount Pictures Dist. Corp.
By: .....

3159 Paramount Pictures Dist. Corp.
Chicago, Illinois

Warner Bros. Circuit Management Corp.

Clearance Schedule—1937-1938

Avalon:
Same as 1936-37.

Grove:
Same as 1936-37.

Hamilton:
Same as 1936-37

Jeffery:
Same as 1936-37.

Shore:
Same as 1936-37.

Warner Bros. Circuit Mgt. Corp.
By: .....

Paramount Pictures Dist. Corp.
By:

3160 Paramount Pictures Dist. Corp.
Chicago, Illinois

Warner Bros. Circuit Management Corp.

Clearance Schedule—1938-39

Avalon:
Same as 1936-37.

Grove:
Same as 1936-37.

Hamilton:
Same as 1936-37.

Jeffery:
Same as 1936-37.

Shore:
Same as 1936-37.

Warner Bros. Circuit Management Corp.
By: .....

Paramount Pictures Dist. Corp.
By: .....

3161—Paramount Pictures Dist. Corp.
Chicago, Illinois

Warner Bros. Circuit Management Corp.

Clearance Schedule—1939-40

Avalon:
Same as 1936-37.

Grove:
Same as 1936-37.

Hamilton:
Same as 1936-37.

Jeffery:
Same as 1936-37.

Shore:
Same as 1936-37.

Warner Bros. Circuit Mgt. Corp.
By: .....

Paramount Pictures Dist. Corp.
By: .....

3162 Paramount Pictures Dist. Corp.
Chicago, Illinois

Warner Bros. Circuit Management Corp.

Clearance Schedule—1940-41

Avalon:
Same as 1936-37.

Grove:
Same as 1936-37.

Hamilton:
Same as 1936-37.

Jeffery:
Same as 1936-37.

Shore:
Same as 1936-37.

Warner Bros. Circuit Mgt. Corp.
By: .....

Paramount Pictures Dist. Corp.
By: .....

3163 Paramount Pictures Dist. Corp.
Chicago, Illinois

Warner Bros. Circuit Management Corp.

Clearance Schedule—1941-42

Avalon:
Same as 1936-37.

Grove:
Same as 1936-37.

Hamilton:
Same as 1936-37.

Jeffery:
Same as 1936-37.

Shore:
Same as 1936-37.

Warner Bros. Circuit Mgt. Corp.
By: .....

Paramount Pictures Dist. Corp.
By: .....

3164 Chicago, Ill.

Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

Warner Bros. Circuit Mgt. Corporation

Schedule of Clearance—Season 1936-37

Warner Bros. Pictures

The exhibitor agrees through the terms of the contract to maintain the following minimum admission for week of release played:

"A" Pre-Release Week:

Minimum adult admission per person, 30c; matinee until 6:30 p. m.; after 6:30 p. m., 50c.

"B" Pre-Release Week:

Minimum adult admission per person, 25c; matinee until 6:30 p. m.; after 6:30 p. m., 40c.

"C" Pre-Release Week:

Minimum adult admission per person, 20c; matinee until 6:30 p. m.; after 6:30 p. m., 30c.

First Week General Release:

Minimum adult admission per person, 15c; Matinee until 6:30 p. m.; after 6:30 p. m., 20c per person.

Minimum admission for children at all times to be not less than 10c per person.

It is mutually agreed evening admission price shall prevail for all performances on Sunday and legal holidays.

Avalon

"A" Week. This theatre is to play in Fourth, Fifth or Sixth week after the last day of exhibition in the loop. If this theatre plays in the Fourth week after the last day of exhibition in the loop, no theatre in the south or southwest sections of Chicago or in the southern part of Cook County, outside the City limits of Chicago or in Lake County, Indiana, to play until fourteen (14) days after the last day of exhibition in this theatre. If this theatre plays in the Fifth week after the last day of exhibition in the loop, no theatre in the above mentioned sections to

play until fourteen (14) days after the last day of exhibition in this theatre. If this theatre plays in the Sixth week after the last day of exhibition in the loop, no theatre in the above mentioned section to play until seven (7) days after the last day of exhibition in this theatre.

If this theatre goes to "B" Week—to play in regular "B" week of release.

Grove

"C" Week of Chicago Release. State in Roseland, and Jeffery to play Pre-release "C" Chicago Release. Shore to play First Week General Release. Park Manor and Burnside to play Third Week General Release. Ray and Stanley to play Fourth Week General Release.

Hamilton

Second Week of Chicago General Release. Ray and Stanley to play Fourth Week of General Release.

Jeffery

Pre-release "C" Chicago Release. Commercial, Shore and Jackson Park to play in First Week of Release. Chelten and Hamilton to play in the Second Week of Release. Ray and Stanley to play in Fourth Week of General Release. Commercial may play in "C" Pre-release Week if 30c adult admission is charged.

Shore

First Week Chicago General Release. Chelten and Hamilton to play in second week of General Release. Ray and Stanley to play in Fourth Week of General Release. Jackson Park to play in First Week of Release.

Warner Bros. Circuit Management Corp.
By:

Warner Bros. Pictures.
By:

3165 Chicago, Ill.

Warner Bros. Circuit Mgt. Corporation

Schedule of Clearance—Season 1937-38

Admission price schedule same as 1936-37.

Avalon
Same as 1936-37.

Grove
Same as 1936-37.

Hamilton
Same as 1936-37.

Jeffery
Same as 1936-37.

Shore
Same as 1936-37.

Warner Bros. Circuit Mgt. Corporation
By: .....

Warner Bros. Pictures,
By: .....

3166 Chicago, Ill.

Warner Bros. Circuit Mgt. Corporation

Schedule of Clearance—Season 1938-39

Admission price schedule, same as 1936-37.

Avalon
Same as 1936-37.

Grove
Same as 1936-37.

Hamilton
Same as 1936-37.

Jeffery
Same as 1936-37.

Shore
Same as 1936-37.

Warner Bros. Circuit Mgt. Corporation.
By: .....

Warner Bros. Pictures.
By: .....

3167 **Schedule of clearance and playing arrangement—season 1939-40—between Warner Brothers Circuit Management Corporation and Vitagraph, Inc., in conjunction with deal sheets dated December 11th, 1939, and deal sheets dated October 16, 1939.**

Admission price schedule: Same as 1936-37.

Avalon

First south side showing. Clearance and prior run on Tivoli, Tower and Southtown Theatres, "A" or "B" week.

"A" week of Chicago city release. Avalon is to play in fourth, fifth or sixth week after the last day of exhibition in the loop. If this theatre plays in the fourth week after the last day of exhibition in the loop, no theatre in the south or southwest sections of Chicago or in the southern part of Cook County, outside the city limits of Chicago or in Lake County, Indiana, to play until seven (7) days after the last day of exhibition in this theatre. If this theatre plays in the fifth week after the last day of exhibition in the loop, no theatre in the above mentioned section to play until seven (7) days after the last day of exhibition in this theatre. If this theatre plays in the sixth week after the last day of exhibition in the loop, no theatre in the above mentioned sections to play until immediately after the last day of exhibition in this theatre.

Second run in loop, not including first run upovcovers, shall not play until termination of run at Avalon and or Capitol theatres provided Avalon and or Capitol theatres play in first or second "A" week of Chicago city release.

In event the Avalon goes to "B" week, the Piccadilly not to play day and date with the Avalon, but can play in second "B" week of Chicago city release. In event the Capitol plays in second "B" week, the Piccadilly is permitted to play in the same week, but not prior to second "B" week of Chicago city release. Tower to repeat on Avalon if Avalon plays in "B" week of Chicago city release.

Grove

To play in "C" week of Chicago city release. Jeffery theatre not to play prior to "C" week of Chicago city release. Shore theatre not to play prior to first week of Chicago city release. Park Manor and Burnside theatre not to play prior to third week of Chicago city release.

Ray and Stanley theatres not to play prior to fourth week of Chicago city release.

Hamilton
Same as 1936-37.

Jeffery
To play in "C" week of Chicago city release.

Shore and Jackson Park Theatres not to play prior to first week of Chicago city release. Chelton and Hamilton Theatres not to play prior to second week of Chicago city release. Ray and Stanley Theatres not to play prior to fourth week of Chicago city release. Commercial not to play prior to "C" week of Chicago city release.

Shore
Same as 1936-37.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

Vitagraph, Inc.
By: T. Gilliam (Signed).

3168 Schedule of clearance and playing arrangement—season 1940-41—between Warner Brothers Circuit Management Corporation and Vitagraph, Inc., in conjunction with deal sheets dated October 24th, 1940.

Admission price schedule: Same as 1936-37.

Avalon
Same as 1939-40.

Grove
Same as 1939-40.

Hamilton
Same as 1936-37.

Jeffery
Same as 1939-40.

Shore
Same as 1936-37.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

Vitagraph, Inc.
By: T. Gilliam (Signed).

PLAINTIFFS' EXHIBIT 121.

RKO Radio Pictures, Inc.
3169 Chicago, Ill.

Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

Warner Bros. Circuit Management Corp.

Clearance Schedule—1936-37

Avalon

First south side showing. Clearance and prior run on Tivoli, Tower and Southtown Theatres, "A" or "B" week.

"A" week. Avalon is to play in fourth, fifth or sixth week after the last day of exhibition in the loop. If this theatre plays in the fourth week after the last day of exhibition in the loop, no theatre in the south or southwest sections of Chicago or in the southern part of Cook County, outside the city limits of Chicago or in Lake County Indiana, to play until seven (7) days after the last day of exhibition in this theatre. If this theatre plays in the fifth week after the last day of exhibition in the loop, no theatre in the above mentioned section to play until seven (7) days after the last day of exhibition in this theatre. If this theatre plays in the sixth week after the last day of exhibition in the loop, no theatre in the above mentioned sections to play until immediately after the last day of exhibition in this theatre.

Second run in loop not to play until termination of run at Avalon Theatre provided Avalon plays picture in first or second "A" week.

In the event the Avalon goes to "B" week the Piccadilly not to play day and date with the Avalon, but can play in second "B" week. In the event the Capitol plays in second "B" week the Piccadilly is permitted to play in the same week, but not prior to second "B" week. Tower to repeat on Avalon if Avalon plays in "B" week.

Grove

"C" week of Chicago Release. State in Roseland, and Jeffery to play pre-release "C" Chicago release. Shore to play first week general release. Park Manor and Burnside to play third week general release. Ray and Stanley to play fourth week general release.

Hamilton

Second week of Chicago general release. Ray and Stanley to play fourth week general release.

Jeffery

Prerelease "C" Chicago Release. Commercial, Shore and Jackson Park to play in first week of release. Chelten and Hamilton to play in second week of release. Ray and Stanley to play in fourth week of general release. Commercial may play in "C" pre-release week if 30c adult admission is charged.

Shore

First Week Chicago General Release. Chelten and Hamilton to play in second week of general release. Ray and Stanley to play in fourth week of general release. Jackson Park to play in first week of release.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

RKO Radio Pictures, Inc.
By: C. E. Smith (Signed).

RKO Radio Pictures, Inc.
3170 Chicago, Ill.

Warner Bros. Circuit Management Corp.

Clearance Schedule—1937-38.

Avalon
Same as 1936-37.

Grove
Same as 1936-37.

Hamilton
Same as 1936-37.

Jeffery
Same as 1936-37.

Shore
Same as 1936-37.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

RKO Radio Pictures, Inc.
By: C. E. Smith (Signed).

RKO Radio Pictures, Inc.
3171 Chicago, Ill.

Warner Bros. Circuit Management Corp.

Clearance Schedule—1938-39.

Avalon
Same as 1936-37.

Grove
Same as 1936-37.

Hamilton
Same as 1936-37

Jeffery
Same as 1936-37.

Shore
Same as 1936-37.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

RKO Radio Pictures, Inc.
By: W. E. Branson (Signed).

RKO Radio Pictures, Inc.
3172 Chicago, Ill.

Warner Bros. Circuit Mgt. Corporation

Clearance Schedule—1939-40.

Avalon
Same as 1936-37.

Grove
Same as 1936-37.

Hamilton
Same as 1936-37.

Jeffery
Same as 1936-37.

Shore
Same as 1936-37.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

RKO Pictures, Inc.
By: J. Osserman (Signed).

RKO Radio Pictures, Inc.
3173 Chicago, Ill.

Warner Bros. Circuit Management Corp.

Clearance Schedule—1940-41.

Avalon
Same as 1936-37.

Grove
Same as 1936-37.

Hamilton
Same as 1936-37.

Jeffery
Same as 1936-37.

Shore
Same as 1936-37.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

RKO Radio Pictures, Inc.
By: Mr. Branson (Signed).

RKO Radio Pictures, Inc.
3174 Chicago, Ill.

Warner Bros. Circuit Mgt. Corporation
Clearance Schedule—1941-42.

Avalon
Same as 1936-37.

Grove
Same as 1936-37.

Hamilton
Same as 1936-37.

Jeffery
Same as 1936-37.

Shore
Same as 1936-37.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

RKO Radio Pictures, Inc.
By: Mr. J. Osserman (Signed).

PLAINTIFFS' EXHIBIT 122.

3175 Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

Schedule of clearance—Season 1936-34—Loew's Incorporated.

Avalon

Repeat on Tivoli Theatre. Day and date with Southtown Theatre.

Grove

Pre-release "C" Chicago release. State, Roseland and Jeffery to play pre-release "C" Chicago release. Shore to play first week general release. Chelton to play second week general release. Park Manor, Kimbark (75th), Burnside to play third week general release. Ray and Stanley to play fourth week general release.

Hamilton

Second week Chicago general release. Ray and Stanlay to play fourth week general release. If Ray Theatre charges 15c adult admission evening said theatre to play in seventh week of general release.

Jeffery

Pre-release "C" Chicago release. Grove and Commercial to play pre-release "C" Chicago release. Jackson Park and Shore to play first week general release. Chelton and Hamilton to play second week general release. Ray and Stanley to play fourth week general release.

Shore

First week Chicago general release. Jackson Park to play first week general release. Chelton and Hamilton to play second week general release. Ray and Stanley to play fourth week general release. If Ray Theatre charges 15c adult evening admission, said theatre to play in seventh week of general release.

September 7, 1937.

3176 Schedule of clearance—season 1947-38 and 1938-39 between Loew's, Incorporated, and Warner Bros. Circuit Management Corp.

The Exhibitor agrees through the terms of the contract to maintain the following minimum admission for week of release played:

"A" Pre-release Week:

Minimum adult admission per person, 30c; matinee until 6:30 p. m.; after 6:30 p. m., 50c.

"B" Pre-release Week:

Minimum adult admission per person, 25c; matinee until 6:30 p. m.; after 6:30 p. m., 40c.

"C" Pre-release Week:

Minimum adult admission per person, 20c; matinee until 6:30 p. m.; after 6:30 p. m., 30c.

First Week General Release:

Minimum adult admission per person, 15c; Matinee until 6:30 p. m.; after 6:30 p. m., 25c.

Second and Third Week General Release:

Minimum adult admission per person, 15c; matinee until 6:30 p. m.; after 6:30 p. m., 20c per person.

Minimum admission for children at all times to be not less than 10c per person.

It is mutually agreed evening admission price shall prevail for all performances on Sundays and legal holidays.

Avalon

The Avalon may play in "A" pre-release week seven days following Tivoli, day and date with Southtown, or in the event photoplays not played Tivoli, may play day and date with Southfown. Photoplays not played Tivoli or Southtown, may play in fourth, fifth or sixth week following first run Loop engagements. Clearance on all other southside theatres excluding the Tivoli and Southtown, and including theatres in southern part of Cook County, Gary, Hammond and Indiana Harbor, Indiana. No other theatre in this prescribed territory to play earlier than "B" pre-release week which is as follows: if first southside "A" pre-release theatre plays in fourth week after Loop showing, fourteen days after last day; if first southside "A" pre-release theatre plays in fifth week after Loop showing, fourteen days after last day; if first south side "A" pre-

ease theatre plays in sixth week after Loop showing
ren days. No theatre other than Piccadilly, Stratford,
wer, Capitol, Metropolitan and Regal to play in "B"
e-release week. Hammond and Gary, Indiana, may play
mediately following "A" pre-release run. Established
" pre-release theatres to play in ninth week following
op first run, and established general first week release
atres to play in tenth week after Loop first run. Tower
l Capitol may play in pre-release "A" week if "A"
ek admission is charged.

ove

"C" week of Chicago release. State in Roseland, and
ffery to play pre-release "C" Chicago release. Shore
play first week general release, Park Manor and Burn-
le to play third week general release. Ray and Stanley
play fourth week general release.

amilton

Second week of Chicago general release. Ray and Stan-
to play fourth week of general release.

ffery

Pre-release "C" Chicago release. Commercial, Shore
d Jackson Park to play in first week of release. Chel-
ton and Hamilton to play in second week of release.
77 Ray and Stanley to play in fourth week of general
release. Commercial may play in "C" pre-release
ek if 30c adult admission is charged.

gre

First week Chicago general release. Chelten and Ham-
on to play in second week of general release. Ray and
anley to play in fourth week of general release. Jackson
ark to play in first week of release.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

Loew's, Incorporated.
By: E. Sanders (Signed).

December 8, 1939.

3178 Schedule of clearance — season 1939-40 — between Loew's, Incorporated, and Warner Bros. Circuit Management Corp.

Avalon

Same as 1937-38.

Grove

Same as 1937-38.

Hamilton

Same as 1937-38.

Jeffery

Same as 1937-38.

Shore

Same as 1937-38.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

Loew's, Incorporated.
By: W. E. Banford (Signed).

November 19, 1940.

3179 Schedule of clearance — season 1940-41 — between Loew's, Incorporated, and Warner Bros. Circuit Mgt. Corp.

Avalon

Same as 1937-38.

Grove

Pre-release "C" Chicago release. State-Roseland, Jeffery to play "C" week. Shore to play first week. Park Manor, Burnside to play third week. Ray to play fourth week.

Hamilton

Second week Chicago release. Ray to play in fourth week.

Jeffery

Same as 1937-38.

Shore

First week Chicago release. Chelten to play second week. Ray to play fourth week. Jackson Park to play first week. Hamilton to play second week.

Warner Bros. Circuit Mgt. Corporation.
By: Alex Halperin (Signed).

Loew's, Incorporated.
By: W. E. Banford (Signed).

October 14, 1941.

3180 Schedule of clearance—season 1941-42—between Warner Bros. Circuit Mgt. Corp. and Loew's Incorporated.

Avalon

Same as 1937-38.

Grove

Same as 1940-41.

Hamilton

Seven days after first day of availability of Jeffery Theatre, or as available. Clearance: 20 days after first day of availability on Ray Theatre.

Jeffery

Sixteen days after first day of availability of Tower Theatre, or as available. Clearance: six days after first day of availability on Shore, Jackson Park and Hamilton Theatres. Thirteen days after first days of availability on Chelten Theatre. Tweaty-seven days after first day of availability on Ray Theatre.

Shore

Seven days after first day of availability of Jeffery Theatre, or as available. Jackson Park and Hamilton Theatres to have same availability as Shore. Clearance: six days after first day of availability on Chelten Theatre. Twenty days after first day of availability on Ray Theatre.

Warner Bros. Circuit Mgt. Corporation.
By Alex Halperin (Signed).

Loew's Incorporated.
By: W. E. Banford (Signed).

3181 The following is Film License Agreement between Twentieth Century Fox Film Corporation and Warner Bros. Circuit Management Corporation dated August 11, 1938, from Pl. Ex. 126:

Endorsed: Filed October 11, 1944. Roy H. Johnson, Clerk.

3182 Page Two

Twentieth Century - Fox Film Corporation
Executive Offices: 444 West 56th St., New York, N. Y.
Short Subject Productions

(Continued from reverse side)

Seventeenth: The following schedule and all of the written and printed parts thereof are a part of this license.

Exchange, Chicago—Date August 11, 1938
Salesman, Office

Schedule of Exhibition Contract

Theatre
Theatres as listed on attached
Exhibitor
Warner Bros. Circuit Management Corporation
Location of Theatre
Chicago, Ill. & Hammond, Ind.

For the license to exhibit each of said photoplays, the exhibitor shall pay to the distributor the following:

Description of Short Features
Group K-6

Exhibitor agrees to a guarantee commitment of two thousand fifty-five dollars ($2,055.00) for Twentieth Century-Fox single reel short subjects released for season 1938-39-K-6.

Price schedule and number of days for each individual situation—as per attached.

Color subjects to be 25% additional which does not increase the basic contract price of $2,055.00.

Distributor agrees to release a minimum of 52 one-reel pictures, and in the event the exhibitor contracts hereunder for more than such minimum number of one-reel subjects, Distributor will be obligated to deliver to the exhibitor only such pictures in addition to such minimum number that it actually releases.

First play date, 1 reel Photoplays

Beginning with the first play date thereof, but subject to availability of the respective photoplays, the Exhibitor agrees to exhibit and to pay for the license to exhibit—— one reel photoplays each week, until the completion of the exhibition hereunder of the respective photoplays licensed hereunder.

The Exhibitor agrees to complete the exhibition of all of the photoplays licensed hereunder not later than thirty days after the last photoplay shall have become available for exhibition hereunder.

Exhibition Arrangement

Clearance—Run

The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked date of exhibition without securing express written permission hereunder.

If, with respect to any photoplay licensed hereunder, the date or dates of exhibition selected, designated or otherwise agreed upon shall be a number of days less than the maximum number specified in the Schedule hereof, then the license hereby granted for such photoplay shall be automatically limited to the number of days or dates of exhibition so selected, designated or otherwise agreed upon, regardless of the number of days specified in said Schedule.

The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sub-lease or sell the following advertising accessories:

The Exhibitor agrees to run photoplays as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Optional Arbitration Clause—The following Clause is optional with the parties hereto. If it is desired to make such Clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that the following Clause, providing for voluntary arbitration of disputes arising hereunder, shall be included as part of this License.

Representative of the Distributor duly authorized to agree to the following Clause.

Exhibitor.

Arbitration—The Exhibitor and the Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration to an Arbitration Board (hereby expressly waiving the oath of the arbitrators) which shall consist of four members, each of whom shall be engaged in the motion picture business, and two of whom to be appointed by the Exhibitor, and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration of any dispute or controversy arising hereunder, the party making such request shall name therein two arbitrators stating the business address

and business or business connection of each and shall designate therein the date, time and place of the hearing of such controversy. The date of such hearing shall not be earlier than seven (7) days from the date of the sending of such notice, unless it shall be claimed in such notice that irreparable injury will result unless there is a speedy determination of such controversy in which case such hearing may be designated to be held earlier than said seven (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall name two arbitrators in a written notice mailed or delivered to the other party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses to name the arbitrators as herein provided or if any arbitrator so named shall fail or refuse to act, or be unable to serve or shall be challenged and others are or another arbitrator qualified and then available to act is not then appointed, others or another arbitrator may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect and any member having such interest shall be disqualified to act.

If the arbitrators or a majority of them are unable to reach a decision, then they, or a majority of them shall immediately select an umpire who shall not be engaged in the motion picture business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall be had before the umpire alone, the arbitrators not to be permitted to attend the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, the American Arbitration Association shall be requested to make such selection.

The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and/or that the same has been breached in whole or in part, and or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to

the provisions of this license agreement and the rights or obligations of the parties thereunder.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearings be had in some other place. If either party fails or refuses to submit to arbitration any such claims or controversy, the other party may apply to a United States District Court or to any other Court, including a court of a state in which such hearings would otherwise not be had, for an order to proceed to arbitrate in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators, or a majority of them and consent that any such decision or award shall be enforceable in or by any Court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and/or terminate this and each such other license agreement; and upon the termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of an Arbitration Board in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal; and the Exhibitor shall have the rights and remedies provided in Clause Second (b) for failure to deliver motion pictures.

Any such termination by either party shall be without

prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party to this or any other existing agreement between the parties.

In the event either party neglects or refuses to appoint its arbitrators within five days after the mailing of a notice by the other party requesting such arbitration and appointing its arbitrators, the party requesting such arbitration may deem such action by the other party a refusal to arbitrate such claims and controversies sought to be arbitrated, and in such event may abandon all further arbitration of such claim or controversy sought to be arbitrated, and may then, without further notice, pursue any further remedy, legal, equitable or otherwise, to which said party may be entitled pursuant to this contract.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

In witness whereof, the parties hereto have duly executed these presents this 11th day of August, 1938.

Twentieth Century-Fox Film Corporation
By Herman Wobber
Exhibitor: Warner Bros. Circuit Management Corporation
By Alex Halperin
(Officer)

3183 License Agreement

Agreement of license under copyright made in one or more counterparts between Twentieth Century-Fox Film Corporation, a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as follows:

License—First: The Distributor grants the Exhibitor and the Exhibitor accepts a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce

for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each of such motion pictures a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Term and Warranty—Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver—(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such

damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Pawment—Third: Exhibitor agree to pay for such licenses as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor at its main office in New York City. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Delivery and Return of Prints—Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show," "tryout," "preview," or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the

motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each

print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such print, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints—Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Ex-

hibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels," upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Dates—Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run—Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise specified in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Reissues, Foreign Pictures and Advertising Matter—Eighth: The Distributor warrants that one of said motion pictures are reissues of old negatives, old negatives retitled or foreign produced by a foreign producer, excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Prior to First Run—Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during the exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be road-shown by the Distributor and not excepted and excluded from this license, until after the completion of such road-

showing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor, unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance by Distributor—Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located west of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing—Eleventh: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served, provided such change or modification does not change or modify the run, and or clearance

period, or decrease any rental; or eliminate any motion picture specified in the Schedule.

Assignment On Sale of Theatre—Twelfth: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, and provided the said theatre has not been destroyed by fire, the elements or other casualty, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing, and in the event the Exhibitor is not released from liability then the Exhibitor and the assignee shall be jointly liable for the further performance of the said license agreement.

Taxes—Thirteenth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance—Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivery any of the said motion pictures for causes beyond their control, then this license in respect to such such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given. It is further agreed that if such disability to perform on the part of the Exhibitor continues

for a period of four months, Distributor may cancel this contract by sending ten days' notice in writing to that effect any time after the expiration of said four months' period.

Remedies—Fifteenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

It is agreed, that in the event of the failure or refusal of Exhibitor to exhibit or pay the license fees of any one or more of the photoplays covered by this contract, Distributor may, at its option, declare such failure or refusal a breach of the entire contract, entitling Distributor to recover from Exhibitor as damages therefor, the amount payable as license fees in respect of all photoplays not theretofore exhibited and/or paid for, pursuant to the provisions of this contract.

Cutting or Alteration of Prints—Sixteenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor however may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

3184 Twentieth Century-Fox Film Corp., Chicago

August 11, 1938

Warner Bros. Circuit—Blanket Contract—Season 1938-39
K-6—Twentieth Century-Fox Single-Reel Short Subjects

Theatre	No. Days	Rental
Avalon	1	$21.25
Capitol	1	21.25
Beverly	1	2.75
	2	5.00
	3	6.25
Cosmopolitan	1	3.75
	2	5.00
Frolic	1	5.00
	3	6.25
Grove	1	5.00
	3	7.50
Hamilton	1	3.75
Highland	1	5.00
	3	7.50
Jeffery	1	5.00
	3	7.50
Lexington	1	3.75
	2	5.00
Oakland Square	1	3.75
	3	5.00
Ogden	1	5.00
	3	7.50
Rhodes	1	5.00
	3	7.50
Shore	1	3.75
	2	5.00
	3	6.25
Stratford	3	10.00
Symphony	1	5.00
	3	7.50
Orpheum, Hammond, Ind.	1	2.50
Second Run	2	3.75

This 11th day of August, 1938.

Warner Bros. Circuit Management Corporation
By Alex Halperin

Twentieth Century-Fox Film Corporation
By Herman Wobber
C. W. Eckhardt, Branch Manager.

3185 Twentieth Century-Fox Film Corp., Chicago

August 11, 1938

Warner Bros. Circuit Management Corporation

Schedule of Clearance & Admission—Season 1938-39

In conjunction with the Contracts signed this day, August 11, 1938, for Feature product of Twentieth Century-Fox Film Corporation, it is agreed herewith that the following Admission and Clearance Schedule will prevail throughout the term of said contracts.

The Exhibitor agrees through the terms of the contracts to maintain the following minimum admission for Week of Release played:

"A" Prerelease Week: Minimum Adult Admission per person 30c Matinee until 6:30 P.M.; after 6:30 P.M., 50c.

"B" Prerelease Week: Minimum Adult Admission per person 25c Matinee until 6:30 P.M.; after 6:30 P.M., 40c.

"C" Prerelease Week: Minimum Adult Admission per person 20c Matinee until 6:30 P.M.; after 6:30 P.M., 30c.

First Week General Release: Minimum Adult Admission per person 15c Matinee until 6:30 P.M.; after 6:30 P.M., 25c.

Second & Third Week General Release: Minimum Adult Admission per person 15c Matinee until 6:30 P.M.; after 6:30 P.M., 20c.

Minimum Admission for Children to be not less than 10c per person at all times.

It is mutually agreed evening admission price shall prevail for all performances on Sundays and Legal Holidays.

Avalon.

The Avalon may play in "A" Prerelease Week seven days following Tivoli, day and date with Southtown, or in the event photoplays not played Tivoli, may play day and date with Southtown. Photoplays not played Tivoli or Southtown, may play in Fourth, Fifth or Sixth Week following First Run Loop engagement. Clearance on all other Southside theatres, excluding the Tivoli and Southtown, and including theatres in Southern part of Cook County, Gary, Hammond and Indiana Harbor, Indiana. No other

theatre in this prescribed territory to play earlier than "B" Prerelease Week which is as follows: if first Southside "A" Prerelease theatre plays in Fourth Week after Loop showing, fourteen days after last day; if first Southside "A" Prerelease theatre plays in Fifth Week after Loop showing, seven days after last day. If first Southside "A" Prerelease theatre plays in Sixth Week after Loop showing, to have Clearance only. No theatre other than Piccadilly, Stratford, Tower, Capitol, Metropolitan and Regal to play in "B" Prerelease Week. Hammond and Gary, Indiana, may play immediately following "A" Prerelease run. Established "C" Prerelease theatres to play in Ninth Week following Loop First Run, and established general First Week Release theatres to play in Tenth Week after Loop First Run.

Beverly

First Week or "C" Week Prerelease. Week and week with State, in Roseland, and Highland, Commercial and Gayety to play in First Week if 25c admission is charged. Blue Island and Harvey to play in "C" Week if general "C" Week admission is charged. Roseland and Parkway, in Roseland, not to play earlier than First Week of Release. Commercial may play in "C" Week if 30c adult admission is charged. Mayfair, 111th & Western, to play in First Week of Release. In event Beverly plays in First Week, Mayfair to follow and play in Second Week of Release.

Capitol

This theatre to play in regular "B" Week of Release with privilege of playing in "A" Week, providing that regular "A" Week admission charge prevails.

Cosmopolitan

First Week Chicago General Release. New Regent, Rex, E.A.R. to play Second Week General Release. Hillside and Sunnyside to play Third Week General Release. Pastime to play Fourth Week General Release.

Frolic

First Week General Release. Pix to play Third Week General Release. If the Harper Theatre charges 25c adult evening admission, said theatre to play in First Week; if 20c adult admission evenings is charged, said theatre to

play in Second Week. Kenwood and Hyde Park to play in Second Week of Release.

Grove

"C" Week of Chicago Release. State, in Roseland, and Jeffery to play Prerelease "C" Chicago Release. Shore to play First Week General Release. Park Manor and Burnside to play Third Week General Release. Ray and Stanley to play Fourth Week General Release.

Hamilton

Second Week of Chicago General Release. Ray and Stanley to play Fourth Week of General Release.

Highland

Prerelease "C" Week. Blue Island and Harvey to play "C" Prerelease Chicago Release. New Regent and Rex to play Second Week General Release. Hillside to play Third Week of General Release.

Jeffery

Prerelease "C" Chicago Release. Commercial, Shore and Jackson Park to play in First Week of Release. Chelten and Hamilton to play in Second Week of Release. Ray and Stanley to play in Fourth Week of General Release. Commercial may play in "C" Prelease Week if 30c adult admission is charged.

Lexington

First Week Chicago General Release. Jackson Park to play in First Week. Amo, Midway-Hippodrome, Drexel and Kimbark (62nd & Kimbark) to play in Second Week of Release. Langley and Plaisance to play in Third Week General Release. Woodlawn to play in Third Week of Release.

3186 Twentieth Century-Fox Film Corp., Chicago

August 11, 1938

Warner Bros. Circuit Management Corporation
Schedule of Clearance & Admission—Season 1938-39

Oakland Square

First Week General Release. Kenwood, Shakespeare and Hyde Park to play in Second Week. Indiana, Pix, Harmony to play in Third Week. Harper may play in First Week if 25c Adult evening admission is charged.

Rhodes

"C" Week of Chicago Release. State, in Roseland, and Jeffery to play "C" Prerelease Chicago Release. Shore to play First Week General Release. Park Manor and Burnside to play Third Week General Release. Ray and Stanley to play Fourth Week General Release.

Shore

First Week Chicago General Release. Chelten and Hamilton to play in Second Week of General Release. Ray and Stanley to play in Fourth Week of General Release. Jackson Park to play in First Week of Release.

Stratford

"B" Week or Prerelease "C" Week of Chicago Release. Ogden to play in Prerelease "C" Week. Englewood and Harvard to play in First Week. New Regent, Ace, Rex and Linden to play in Second Week. Lynn, Halsted and Empress to play in Third Week. Linden may play in First Week in event subject not played Englewood Theatre.

Symphony

First Week of Release. Week and week with Byrd and West End. Clearance on Ambassador, Iris, Plaisance and Park Theatres—to play Second Week. Ohio to play in Third Week.

Ogden

"C" Prerelease of Chicago Release. Boulevard, Marquette and Highway to play in First Week of Release. New Regent, Fox and Ace to play in Second Week. Lynn, Halsted and Empress to play in Third Week of Release.

Orpheum, Hammond, Ind.

Second Run Hammond, Indiana. Thirty (30) Days on Third Run in Hammond and Calumet City, Indiana. Pictures to be available Sixty (60) Days after First Run in Hammond, Indiana.

Parthenon and Paramount, Hammond, Ind.

First Run Hammond, Indiana. May play in "A" Prerelease Chicago Release following Tivoli, Avalon and Southtown Theatres, but not later than "B" Prerelease Chicago Release. Sixty (60) Days' Clearance on subsequent runs in Hammond, Calumet City and Roseville, Indiana. First run Whiting, Indiana, Indiana Harbor, Indiana, and East Chicago, Indiana, may play immediately following First Run Hammond, Indiana.

This 11th day of August, 1938.

Warner Bros. Circuit Management Corporation
By: Alex Halperin

Twentieth Century-Fox Film Corporation
Herman Wobber
C. W. Eckhardt, Branch Manager.

3187 (Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

The following is Film License Agreement between RKO Radio Pictures, Inc. and Warner Bros. Circuit Management Corporation dated November 7, 1941, from Pl. Ex. 131:

PLAINTIFF'S EXHIBIT 47

Date November 7, 1941.

EXCH. RKO RADIO PICTURES, INC.
Town Chicago, Ill.

Situation & Policies	GROUP #1

Citizen Kane All That Money Can Buy Father Takes a Wife
Parachute Battalion Lady Scarface Mexican Spitfire's Baby

. . . . . .

Theatre	Productions Bought	No. Days	Terms
Avalon	Citizen Kane	7	$1,500.00
	All That Money Can Buy	7	1,250.00
Capitol	Citizen Kane	7	1,250.00
	Father Takes A Wife	8	800.00
	Parachute Battalion	8	840.00
Beverly	Citizen Kane	3-4	275.00
	All That Money Can Buy	3-4	250.00
Cosmo	Citizen Kane	2-3	100.00
	All That Money Can Buy	2-3	75.00
	Father Takes A Wife	2-3	60.00
	Parachute Battalion	2-3	60.00
	Lady Scarface (Mexican Spitfire's Baby)	2-3	50.00
	May eliminate pictures played at Capitol, or play at 60% of the clear price.		
Frolic	Citizen Kane	2-3	85.00
	All That Money Can Buy	2-3	75.00
	Father Takes A Wife	2-3	50.00
	Parachute Battalion	2-3	50.00

CLEARANCE

Clearance as per clearance letter dated November 7, 1941.

Accepted: W. J. Branson
DISTRIBUTOR

Accepted: Alex Halper
WARNER BROS.
CIRCUIT MANAGEMENT CORP.

PLAINTIFF'S EXHIBIT 47

Date November 7, 1941
EXCH. RKO RADIO PICTURES, INC.
Town Chicago, Ill.

Situation & Policies — GROUP #1 (page 2)

Citizen Kane All That Money Can Buy Father Takes A Wife
Parachute Battalion Lady Scarface (Mexican Spitfire's Baby)

Theatre	Productions Bought	No. Days	Terms
Grove	Citizen Kane	3-4	$175.00
	All That Money Can Buy	3-4	150.00
	Parachute Battalion	2-4	110.00
	Any picture used at the Grove REPEAT on the Rhodes, 25% reduction in price.		
Hamilton	Citizen Kane	2-3	60.00
	All That Money Can Buy	2-3	40.00
	Father Takes A Wife	2-3	35.00
	Parachute Battalion	2-3	35.00
Highland	Citizen Kane	3-4	250.00
	All That Money Can Buy	3-4	200.00
	Parachute Battalion	3-4	140.00
Jeffery	Citizen Kane	3-4	275.00
	All That Money Can Buy	3-4	250.00
	Parachute Battalion	3-4	150.00
Metropolitan	Citizen Kane	2-4	225.00
	All That Money Can Buy	2-4	200.00
	Parachute Battalion	2-4	125.00
	Lady Scarface (Mexican Spitfire's Baby)	2-4	75.00

CLEARANCE

Clearance as per clearance letter dated November 7, 1941.

Accepted: W. E. Bronson
DISTRIBUTOR

Accepted: Alex Holpen
WARNER BROS.
CIRCUIT MANAGEMENT CORP.

3190

Date November 7, 1941
EXCHANGE RADIO PICTURES, INC.
Town Chicago, Ill.

Situation & Policies — GROUP #1 (page 3)

Citizen Kane, All That Money Can Buy, Father Takes A Wife, Parachute Battalion, Lady Scarface (Mexican Spitfire's Baby)

Theatre	Productions Brought	No. Days	Terms
Oakland Sq....	Citizen Kane	2-3	$ 60.00
	All That Money Can Buy	2-3	50.00
	Father Takes A Wife	2-3	37.50
	Parachute Battalion	2-3	37.50
	Lady Scarface (Mexican Spitfire's Baby)	2-3	25.00
Ogden.....	Citizen Kane	3-4	225.00
	All That Money Can Buy	3-4	175.00
	Parachute Battalion	3-4	135.00
Rhodes.....	Citizen Kane	3-4	175.00
	All That Money Can Buy	3-4	150.00
	Parachute Battalion	3-4	125.00
	Any picture used at the Rhodes REPEAT on the Grove, 25% re-reduction in price.		
Shore.....	Citizen Kane	2-3	125.00
	All That Money Can Buy	2-3	100.00
	Father Takes A Wife	2-3	60.00
	Parachute Battalion	2-3	60.00
Stratford.....	Citizen Kane	3-4	350.00
	All That Money Can Buy	3-4	250.00
	Parachute Battalion	3-4	200.00

CLEARANCE

Clearance as per clearance letter dated November 7, 1941.

Accepted: W. E. Bronson
DISTRIBUTOR

Accepted: Alex Hassen
WARNER BROS.
CIRCUIT MANAGEMENT CORP.

3191 PLAINTIFF'S EXHIBIT 47

Date November 7, 1941

EXCH. RKO RADIO PICTURES, INC.

Town Chicago, Ill.

Situation & Policies — GROUP #1 (page 4)

Citizen Kane All That Money Can Buy Father Takes A Wife Parachute Battalion Lady Scarface (Mexican Spitfire's Baby)

Theatre	Productions Bought	No. Days	Terms
Symphony	Citizen Kane	2-3	$125.00
	All That Money Can Buy	2-3	100.00
	Father Takes A Wife	2-3	50.00
	Parachute Battalion	2-3	50.00
Parthenon or Paramount, Hammond, Ind.	Citizen Kane	2-4	35% less 2½% D. F.
	All That Money Can Buy	2-4	30% less 2½% D. F.
	Father Takes A Wife	2-4	25% less 5% D. F.
	Parachute Battalion	2-4	$135.00
	Lady Scarface (Mexican Spitfire's Baby)	2-4	100.00
Orpheum, Hammond (Second run)	Citizen Kane	2-3	65.00
	All That Money Can Buy	2-3	55.00
	Father Takes A Wife	2-3	45.00
	Parachute Battalion	2-3	45.00
	Lady Scarface (Mexican Spitfire's Baby)	2-3	35.00

CLEARANCE

Clearance as per clearance letter dated November 7, 1941.

Accepted: W. F. Bronson
DISTRIBUTOR

Accepted: Alex Holpen
WARNER BROS.
CIRCUIT MANAGEMENT CORP.

3192

Date November 7, 1941.

Exch. RKO Radio Pictures, Inc.
Town Chicago, Ill.

Group #1 (page 5)

Citizen Kane	All That Money Can Buy
Father Takes a Wife	Parachute Battalion
Mexican Spitfire's Baby	Lady Scarface

Special Clauses

The following clauses are part of the feature deal between RKO Radio Pictures, Inc. and Warner Bros. Circuit Management Corporation.

1. Clearance as per clearance letter dated November 7, 1941.
2. Extra days on flat rental pictures to be 50% pro-rata per day except at the Avalon and Capitol.
3. Extra days on percentage pictures to be 5% less, including moveover from one house to another.
4. RKO flat rental pictures playing with RKO percentage pictures over and above the contracted number of days to be no charge. This includes moveover from one house to another.
5. There is to be deduction for giveaways, maximum of $100.00.

Accepted: W. E. Branson,
Distributor.

Accepted: Alex Halperin,
Warner Bros.
Circuit Management Corp.

3193 Exhibitor's Copy

(Branch) Chicago #6 (Theatre) Warner Bros. Theatres as per Attached Schedule

RKO Radio Pictures, Inc.

License Agreement

(Salesman) J. C. Osserman (Block) 36

Schedule

Group	Title of Picture and Production Number
1	Citizen Kane
1	All Money Can Buy
1	Father Take a Wife
1	Parachute Battalion
1	Mexican Spitfire's Baby

The attached schedule showing the feature photoplays committed to each theatre, with number of days and rental for each photoplay, becomes a part of this contract.

Admission Prices—During the entire period while any picture licensed hereunder is being exhibited at the theatre, the Exhibitor shall charge the following prices per person for admission to said theatre, which prices shall be exclusive of any tax upon such admission.

Matinee: Adults, orchestra ..... balcony ..... ; children, orchestra ..... balcony ..... Evening: Adults, orchestra ..... balcony ..... ; children, orchestra ..... balcony .....

Unless a greater admission price is specified above, the Exhibitor will charge an admission of not less than 15c exclusive of any tax for adults at evening performances and not less than 10c exclusive of any tax at all other performances.

If during the exhibition of any picture hereunder, the Exhibitor should charge lower admission prices than those hereinbefore specified, the Distributor, in addition to all other rights hereunder shall have the right (a) to immediately terminate the license for the picture then being

exhibited by giving written notice to that effect to the Exhibitor; and upon giving such notice the license for such picture shall thereupon terminate forthwith and revert to the Distributor; or (b) to reduce by not more than one-half any clearance period granted herein to the Exhibitor in respect of each picture thereafter deliverable hereunder; or (c) if no clearance is granted herein, then to withhold for not more than sixty (60) days the availability notice to the Exhibitor in respect of all pictures thereafter deliverable hereunder, and as to each such picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such picture after notice of the availability thereof upon the date or dates determined as provided in Article Ninth hereof.

In consideration of the license fees agreed to be paid by the Exhibitor, the Distributor hereby grants the Exhibitor the following run and clearance:

Run—The pictures hereunder are licensed for ..... run in .....

.....

Clearance—

as per general schedule of clearance dated Nov. 7th, 1941.

End of Schedule

Interchangeability of License Fees

Twenty-first: The Distributor may, in its sole discretion, interchange the license fees specified in the Schedule to be paid with respect to any picture hereunder with the license fees so specified to be paid with respect to any other picture hereunder.

Single Feature Program

Twenty-second: The Distributor shall have the right to require the Exhibitor to exhibit one of the pictures hereunder on a single feature program by giving written notice to the Exhibitor to that effect at or prior to the time of giving written notice of the availability of such picture or, if the exhibition date of such picture is designated in the Schedule, by giving such written notice to the Exhibitor at least five (5) days prior to such exhibition date.

Optional Arbitration Clause

Twenty-third: The Distributor and Exhibitor agree that all claims and controversies arising out of a breach of this agreement shall be submitted to arbitration in accordance with the provisions of Section XXII of the Consent Decree entered in the action entitled "*United States of America* v. *Paramount Pictures, Inc., et al.*" and the Rules of Arbitration and Appeals adopted pursuant to said Section XXII. The power of the arbitrator shall be limited to findings of fact that this agreement has been breached in whole or in part and to directing the specific performance of this agreement and/or the payment of damages. The arbitration shall take place before the Motion Picture Arbitration Tribunal of the exchange district wherein the exchange of the Distributor, from which the Exhibitor is served, is located. The Distributor and the Exhibitor both agree to abide by and forthwith comply with the award of the arbitrator and consent that such award shall be enforceable in any court of competent jurisdiction pursuant to the laws of such jurisdiction now or hereafter in force. This article providing for voluntary arbitration of disputes shall be deemed excluded from this agreement unless the Exhibitor shall sign at the place indicated immediately below:

_____
Exhibitor.

By_____

In Witness Whereof Warner Bros. Circuit Mgmt. Corp. the Exhibitor, operating the Theatres as per attached schedule, located at _____ in the City of _____, State of _____ has on November 7, 1941, executed this application which, upon acceptance thereof by the Distributor as provided in Article 16th shall be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule and in accordance with the terms and conditions hereof.

Exhibitor Warner Bros. Circuit Mgmt. Corp.
Individual—Corporation—Partnership
(strike out two)
(Lessee, Agent, Owner [Strike out 2]
By Alex Halperin,
Officer—General Manager—Partner
(strike out two)

Accepted at New York, N. Y.
Date_____
RKO Radio Pictures, Inc.
By W. E. B.

RKO Radio Pictures, Inc.

Agreement between RKO Radio Pictures, Inc., a Delaware corporation (hereinafter referred to as "the Distributor"), party of the first part and the Exhibitor execute this agreement (hereinafter referred to as "the Exhibitor"), operating the theatre(s) designated on the reverse side hereof, party of the second part.

Witnesseth:

For the mutual considerations appearing in this agreement and the parties hereto do hereby agree as follows:

First: Subject to the payment of the license fees specified in the schedule on the reverse side hereof (hereinafter referred to as "the Schedule"), and subject to all of the other terms and conditions contained on both pages hereof, the Distributor hereby grants and agrees to grant to the Exhibitor and the Exhibitor hereby accepts and agrees to accept a limited license or licenses under the copyright or copyrights of the motion picture or motion pictures designated in the Schedule (hereinafter called the pictures, such term referring to the one picture, if only one picture is designated in the Schedule) and under any copyright covering any matter included in the sound recorded for reproduction in connection with the exhibition of the pictures, to exhibit publicly the pictures and to reproduce for public performance such recorded sound, but only at the theatre or theatres designated on the reverse side hereof, (hereinafter called "the Theatre", such term referring to all the theatres if more than one is designated on the reverse side hereof) and for the number of consecutive days specified in the Schedule, which days shall be only the dates set forth in the Schedule or determined as provided in Article Ninth hereof, as the case may be, and no other days or dates, and this license shall extend to no other time, place, use or purpose. The license to reproduce such recorded sound, or any thereof, is granted and agreed to be granted only upon the express warranty and agreement by the Exhibitor and upon the express condition that (a) the sound reproducing equipment in the theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high qual-

ity, whether it is recorded upon a print or upon separate records, discs or other similar devices; and (b) if copyrighted musical composition shall be included in such recorded sound, the Exhibitor will have, at the time of the reproduction thereof, an effective license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly such copyrighted musical compositions. The Distributor may record such sound, or any part thereof, on the prints of the respective pictures or on separate records, discs or other devices, as the Distributor may from time to time elect and all references to a print made herein shall be deemed to include any records, discs or other devices upon which sound is recorded for reproduction in connection with the exhibition of such print. The license herein granted in respect of each picture shall extend only to the exhibition of the print of such picture delivered by the Distributor to the Exhibitor pursuant to Article Eighth hereof, and on reels the same size as those furnished by the Distributor, and shall not extend to the exhibition of any other print or the use of reels of any other size.

If this agreement provides that the Exhibitor shall have the right or license to exhibit the pictures at more than one theatre or at one or two or more named theatres, the Exhibitor has no right or license to exhibit any picture at any theatre other than the particular theatre for the exhibition at which such picture shall have been specifically booked in accordance with Article Ninth hereof and pursuant to the license herein granted.

The Exhibitor will not allow the print of any picture to leave the Exhibitor's possession during the period herein specified for the exhibition thereof, and will not permit the exhibition of any print at any other time or place.

Term of Agreement

Second: Unless otherwise provided in the Schedule, the terms of this agreement (as distinguished from the terms of the respective licenses to exhibit the pictures) shall be for a period of one (1) year commencing with the date hereof; provided, however, that the Distributor may, at its election, extend such term from time to time, by giving the Exhibitor written notice of its election so to do, in the event of the failure of the Exhibitor to exhibit any

picture on the date designated in the Schedule or fixed as provided in Article Ninth hereof, as the case may be.

Payment of License Fees

Third: The Exhibitor agrees to pay the fixed sums specified in the Schedule as a license fee for each picture at least three (3) days in advance of the first date fixed for the exhibition of such picture as set forth in the schedule or as determined in accordance with Article Ninth hereof, as the case may be. Payment, if any, made upon the execution hereof shall be deemed payment on account of the sums last payable hereunder.

If all or any part of the license fee for any picture hereunder is to be computed upon the Exhibitor's gross receipts, such payment shall, if the Distributor so requests, be made to the Distributor at the end of each day's exhibition of such picture or, in the absence of such request, shall be made upon the day following the last day of exhibition of the picture. Each such payment shall be accompanied by a correct itemized statement of the gross receipts of the theatre upon the exhibition day or days of such picture for which payment is so required to be made. Such itemized statements shall be signed by the Exhibitor or the Exhibitor's manager and also by the Exhibitor's cashier or treasurer and, if the Distributor, shall so request, shall be made upon form furnished by the Distributor.

At all times upon such exhibition dates, the Distributor's authorized representatives shall have free access to all parts of the theatre, including the box office, and with the right to check the sale of tickets, the number of persons entering the theatre and the gross receipts therefrom. For such purposes any such representative shall have the right to examine all ticket machines, tickets and stubs. The Exhibitor agrees that he will keep accurate books and records with respect to the exhibition of each such picture which will show the number of admissions and the gross receipts of each performance during the run of such picture at the theatre. At any time after the conclusion of the engagement of each such picture, the Distributor's authorized representative shall have the right to audit all of the Exhibitor's books and records pertaining to the exhibition of such picture. If the operating expense of

the theatre is an element in computing the amounts payable to the Distributor hereunder, the Distributor's authorized representative shall have the right, at any time within ninety (90) days after the receipt by the Distributor of the Exhibitor's statement or statements of operating expenses, to examine such books and records relating to such expenses.

In computing the Exhibitor's operating expenses all income to the Exhibitor, such as amounts from renting any space in the theatre building or for screen advertising of any kind in the theatre during the period of the engagement of any percentage picture hereunder, shall be deducted from the Exhibitor's operating expenses.

Any information obtained by the Distributor pursuant to the provisions of this Article shall be treated as confidential except in any litigation or arbitration proceedings.

"Gross receipts" means all sums received by the Exhibitor (other than admission taxes collected) for admission to said theatre at each exhibition of the respective pictures.

All payments required to be made to the Distributor hereunder shall be made at the Distributor's exchange out of which the Exhibitor is served.

Clearance and Run

Fourth: If the Exhibitor is granted a specific run or clearance of the pictures hereunder and is not in default hereunder, the Distributor will not license the exhibition of any such picture in conflict with the run or prior to the expiration of any clearance period so granted the Exhibitor.

Midnight Shows—Exhibition Dates

Fifth: Unless otherwise provided in the Schedule no picture hereunder shall be exhibited in whole or in part at any time between 12:01 A. M. and 7:00 A. M.

If the number of days of exhibition designated or otherwise agreed upon, as provided herein, are less than the maximum number of days herein specified, this license shall, upon such designation or agreement, be limited to the number of days so designated or otherwise agreed upon, and in such event the maximum number of days

herein specified for any such picture shall be deemed to be reduced accordingly.

Continued Runs

Sixth: If any run herein granted is other than a first run, the Distributor shall have the right without incurring any liability to the Exhibitor to license any of the pictures hereunder for a "continued first run exhibition." A "continued first run exhibition" is defined to mean a run commencing immediately after the end of the initial first run and before any other run, and with admission prices not lower than those charged at the initial first run. The availability to the Exhibitor of any picture so exhibited for a continued first run shall be deferred for a period equal to the number of days that such picture shall have been so exhibited.

Prior Runs

Seventh: If the run herein granted is other than a first run, the Distributor may request that any of the pictures so exhibited by the Exhibitor as a prior run and the Exhibitor agrees to comply with such request.

Delivery and Return of Prints

Eighth: The Distributor agrees to deliver to the Exhibitor a positive print of each picture for exhibition at the theatre on the dates specified in the Schedule or determined as hereinafter provided, as the case may be, which print shall be physically suitable for exhibition. Delivery of such prints by the Distributor to the Exhibitor or to the Exhibitor's agent at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof, in accordance with the carrier's time schedule, to deliver prints to the Exhibitor's theatre or at the city, town or village where the Exhibitor's theatre is located, at least one (1) hour before the usual time for the opening of the theatre.

The Exhibitor agrees to return each print received by the Exhibitor hereunder, with the reels and containers

furnished therewith, to the Distributor's exchange from which the Exhibitor is served, or as otherwise directed by the Distributor, immediately after the last exhibition of such print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such prints, reels and containers to the Exhibitor from the Distributor's exchange or from such last previous exhibitor having possession of any such prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor, and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such print by the Exhibitor.

If the Exhibitor fails to or delays the return of any print to the Distributor, or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and, in addition, the damage, if any, so caused such other exhibitor.

Selection of Play Dates

Ninth: Unless otherwise agreed upon or otherwise provided for in the Schedule, the exhibition date or dates for each of the pictures shall be determined as follows:

(a) Subject to the provisions hereof, within a reasonable time after a print, or prints of any of the pictures are received at the exchange of the Distributor out of which the Exhibitor is served and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when such picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "availability date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the availability date therein specified. Anything herein contained to the contrary notwithstanding, the fixing of an availability date for the exhibition of a picture, and the making of such picture avail-

able on such date of exhibition, shall be subject to prior runs or clearance, if any, heretofore or hereafter granted by the Distributor to other exhibitors, and shall further be subject to the availability of a print for delivery to the Exhibitor.

(b) Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to any other exhibitor which date or dates shall be within a period commencing on the availability date and ending thirty (30) days thereafter, and forthwith mail to the Distributor written notice of the date or dates so selected.

(c) If the Exhibitor fails to select such date or dates the Distributor may, at its election, designate an exhibition date or dates by mailing written notice thereof to the Exhibitor. In the event the Distributor makes such designation the Exhibitor shall be obligated to mail forthwith to the Distributor written confirmation of such date or dates, and unless such written confirmation is so given by the Exhibitor the Distributor shall have no obligation to ship or tender a print of such picture to the Exhibitor.

Loss of and Damage to Prints

Tenth: For each linear foot of any positive print lost, stolen, destroyed or damaged between the time of the delivery thereof by the Distributor and the return thereof by the Exhibitor, the Exhibitor shall pay the Distributor a sum equal to the cost of replacement thereof at the Distributor's exchange, which sum shall be in full settlement of all claims for such loss, theft, destruction or damage. Such payment, however, shall not transfer title in such positive print to the Exhibitor or any other party. The Distributor will, at the option of the Exhibitor, repay or credit to the Exhibitor any sums paid by the Exhibitor for lost or stolen prints, upon their return to the Distributor within thirty (30) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the loss or theft of or the destruction or damage to any print if the Exhibitor shall establish that such loss, theft, damage or destruction occurred while the print was in transit from the Exhibitor in accordance with the provisions of Article Eighth hereof. The Exhibitor shall immediately notify the Distributor's exchange by

telegram of the loss, theft, destruction or damage of any print. If any print shall be received from the Exhibitor by the Distributor or by any subsequent exhibitor in a damaged or partially destroyed condition, it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof, shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition and set forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Assignment Upon Sale of Theatre

Eleventh: This agreement shall not be assigned by the Exhibitor without the written consent of the Distributor; provided, however, that upon the sale or other disposition by the Exhibitor of the Exhibitor's interest in the theatre the Exhibitor may assign this agreement to the purchaser of such interest without the written consent of the Distributor if the Exhibitor shall deliver to the Distributor a written acceptance thereof by the assignee assuming the obligations of the Exhibitor hereunder. In the event that the Exhibitor shall for any reason cease to operate the theatre or cease to remain in possession thereof the Exhibitor shall be obligated to, within ten (10) days thereafter, assign this agreement to the person succeeding to the operation of the theatre and deliver to the Distributor a written acceptance thereof by the assignee assuming the obligations of the Exhibitor hereunder.

The assignment of this agreement by the Exhibitor shall not operate to release the Exhibitor from liability hereunder unless the Distributor has consented in writing to such release.

Advertising

Twelfth: The Exhibitor agrees to advertise and announce each picture as a "Radio Picture". In all newspaper advertising and publicity issued by the Exhibitor relating to the pictures, the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Unless this agreement expressly provides for the "first run" in the City or Town wherein the theatre is located,

the Exhibitor agrees not to advertise any of the pictures by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to the completion of the exhibition thereof by any other exhibitor having the right of the "first run" or any other prior run thereof in said City of Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other agreement with any other exhibitor.

The Distributor warrants that none of the pictures contain or will contain any advertising matter for which compensation is received by the Distributor.

Taxes

Thirteenth: The Exhibitor agrees to pay to the Distributor an amount equal to the aggregate of all taxes now in effect or hereafter imposed, or based upon the license, delivery, exhibition, possession or use by the Exhibitor of the prints of the motion pictures licensed hereunder, or upon the grant of such license or the exercise thereof, or measured by the license fees, however determined, paid or payable by the Exhibitor to the Distributor under this license. The word "tax" as used in this paragraph shall be deemed to include, but shall not be limited to, taxes, fees, assessments, charges, imposts, levies, excises, whether denominated a sales, gross income, gross receipt, personal property, storage, use, consumption, license, compensating, excise or privilege tax. If the amount of any tax payable under this clause cannot be exactly determined, the Distributor may estimate the amount of such tax and the Exhibitor shall pay to the Distributor such estimated amount upon demand therefor; provided, however, that upon the determination of the exact amount of any such tax the Exhibitor shall be entitled to repayment of or credit for any excess amount paid. Upon the failure or refusal of the Exhibitor to pay any tax or any part thereof, the Distributor shall have all the remedies herein provided for the collection of license fees as well as all other remedies provided by law.

Prevention of Performance

Fourteenth: If the Exhibitor shall be prevented from exhibiting any picture hereunder for any cause beyond the Exhibitor's direct control, the license in respect of each such picture shall terminate and revert to the Distributor without liability on the part of the Exhibitor provided the Exhibitor gives the Distributor written notice of such termination and the cause thereof within ten (10) days after the cause shall have occurred.

If for any cause beyond the Distributor's direct control, the Distributor shall be prevented from delivering any picture to the Exhibitor or from otherwise performing its obligations hereunder, the Exhibitor agrees to, and does hereby, waive all claims for damages arising therefrom.

Alterations of Prints Prohibited

Fifteenth: The Exhibitor agrees to run the pictures as delivered without any alterations other than those which have been consented to by the Distributor in writing or which are necessary to comply with the requirements of any duly authorized public authority.

Acceptance by Distributor

Sixteenth: Until the Distributor's written or telegraphic acceptance hereof is sent to the Exhibitor by an officer of the Distributor or such other person as shall be authorized to do so by the Distributor, this instrument shall be deemed only an application for a license under copyright, and may be withdrawn by the Exhibitor at any time before such acceptance. Unless such acceptance is sent to the Exhibitor within fifteen (15) days after the date hereof, if the theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of signing this application, as payment for any purpose, or the delivery of a print of any of the pictures, shall not be deemed an acceptance hereof by the Distributor.

A copy of this application signed simultaneously herewith

by the Exhibitor shall be left with the Exhibitor. If this application is accepted a duplicate thereof signed by the Distributor shall be sent to the Exhibitor.

Default

Seventeenth: In the event that the Exhibitor shall (a) fail or refuse to exhibit any picture or to pay the license fee in respect of any picture, (b) fail or refuse to select or designate a date for the exhibition thereof as provided in Article Ninth hereof, or (c) otherwise default in its obligations hereunder, the Distributor, at its election, may consider any such default as a material breach hereof by the Exhibitor and may either (1) terminate this agreement (and, at the election of the Distributor, any other agreement or agreements with the Exhibitor) with respect to any or all of the pictures not theretofore exhibited by the Exhibitor, in which event the license fees for such cancelled picture or pictures shall immediately become due and payable, (2) withhold the delivery of additional pictures under this agreement (and, at the election of the Distributor, under any other agreement or agreements with the Exhibitor) until such default shall cease and be remedied, or (3) if such default shall relate to the payment of the license fees in respect of any picture or pictures, the Distributor may deliver any subsequent picture C. O. D. in an amount sufficient to pay the license fee for such subsequent picture and all previous pictures in respect of which the license fees are delinquent. If the Distributor shall, pursuant to the provisions hereof, elect to terminate this agreement (or to terminate this agreement and any other agreement or agreements with the Exhibitor) with respect to any or all of the pictures not theretofore exhibited by the Exhibitor, then in such event the grant, if any, of the run in respect of such cancelled picture or pictures shall stand revoked, the license in respect thereof shall revert to the Distributor, and the Distributor may thereafter license to other exhibitors any or all of such pictures.

In the event that the Exhibitor is adjudicated bankrupt or becomes insolvent, or makes an assignment for the benefit of creditors, or if a receiver, liquidator or trustee is appointed for the affairs of the Exhibitor, then in either of such events the Distributor, at any time thereafter, may

terminate this agreement in respect of pictures not theretofore exhibited by the Exhibitor by giving the Exhibitor notice in writing to that effect and thereupon the license fees for such pictures shall immediately become due and payable.

The election by the Distributor of any remedy hereunder shall not be deemed an election of such remedy in connection with any other default of the Exhibitor nor shall it be deemed a waiver of any additional right or remedy of the Distributor hereunder or in law or equity.

Waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

At the election of the Distributor, a breach by the Exhibitor or any other agreement between the Distributor and the Exhibitor shall constitute a breach of this agreement by the Exhibitor.

Liquidated Damages, Percentage Bookings

Eighteenth: (a) If the license fee of any picture is to be computed either in whole or in part upon a percentage of the gross admission receipts of the theater, and if the Exhibitor shall default by failing entirely to exhibit such picture as required hereunder, then the Exhibitor shall pay the Distributor as liquidated damages for each day that the Exhibitor fails to exhibit such picture a sum equal to such percentage of the average daily gross receipts of the theatre during the exhibition thereat of all of the preceding pictures of the Distributor in the same price classification as such unexhibited picture which have been exhibited by the Exhibitor during the immediately preceding ninety (90) days, whether exhibited under this agreement or other agreements. If no such pictures shall have been previously so exhibited hereunder then the liquidated damage shall be a sum equal to such percentage of the average daily gross receipts of the theatre during the thirty (30) days immediately prior to the date when the Exhibitor's aforementioned default shall have occurred.

(b) If the Exhibitor shall exhibit such picture for one or more (but less than all) of the required number of days, then the liquidated damages for each day that the Exhibitor fails to exhibit such picture shall be a sum equal to

(1) such percentage of three-quarters of the gross receipts of the theatre for the last day of the exhibition thereat of such picture if a Saturday or a Sunday or a legal holiday was not the day or one of the days on which such picture was unexhibited; (2) such percentage of one and one-half times the gross receipts of the theatre for the last day of the exhibition thereat of such picture if a Saturday was the day or one of the days on which such picture was unexhibited; (3) such percentage of two and one-quarter times the gross receipts of the theatre for the last day of the exhibition thereat of such picture if a Sunday or a legal holiday was the day or one of the days on which such picture was unexhibited.

The liquidated damages provided for in this Article shall be in addition to any fixed sums payable hereunder in respect of such picture.

Agreement Complete and Representation

Nineteenth: This agreement is complete and no promises have been made by either party to the other except as set forth herein. The person who executes this contract on behalf of the Exhibitor expressly represents and warrants that he has full and complete authority from the Exhibitor to do so and the Distributor in executing this contract relies fully upon said warranty.

The following is Film License Agreement between Paramount Pictures Inc. and Warner Bros. Circuit Management Corporation dated November 18, 1940, from Pl. Ex. 133:

3196 (Page 2) Exchange Chicago Theatre Avalon

City & State Chicago, Ill.

Twenty-First: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule

Group S-12

There are licensed for exhibition hereunder all of the motion pictures of feature length, not to exceed thirty-eight (38), which shall be generally released by the Distributor for distribution to motion picture theatres in the

United States during the year commencing September 1st, 1940, and ending August 31st, 1941, (for all purposes to be known as Group S-12 feature motion pictures), except the motion pictures as to which Distributor is required by contract to obtain the consent or approval of the Producer thereof, or other party, to the terms and conditions of licensing the exhibition thereof; and except foreign pictures (as such term is hereinabove described), and Paramount's six (6) Hopalong Cassidys. The "road showing", "pre-view", "try-out" and/or "pre-release" of any motion picture during the said year shall not be deemed a general release of said motion picture.

For the license to exhibit each of said motion pictures, the Exhibitor shall pay to the Distributor the following:

The Avalon Theatre of Chicago Illinois Has the Privilege of Spot Booking Group S-12 Product as Follows:

	Consecutive days run	License fee or minimum guarantee per picture
"A" Week	7	787.50
"B" Week	7	787.50
"B" Week "Clear of Tivoli and Southtown)	3/4	518.75
"B" Week (repeat on Southtown clear of Tivoli)	3/4	518.75
"B" Week (repeat on Tivoli, clear of Southtown)	3/4	518.75
"B" Week (Repeat on Tivoli and Southtown)	3/4	393.75

It is expressly understood and agreed that the Distributor does not license hereunder to the Exhibitor any particular motion picture but only those motion pictures are licensed hereunder which shall be generally released by the Distributor as provided in the Schedule above; that the announcement book, work sheet, press sheet or any other announcement issued by the Distributor is issued for the purpose only of indicating what the Distributor plans to produce and does not constitute any warranty or representation that the motion pictures therein referred to or described will be generally released during the period provided in the Schedule.

Distributor shall have the right to designate from time to time, to the foregoing classifications the motion pictures licensed hereunder, regardless of the classification thereof made by the Distributor under any other license agreement.

It is agreed that the license fees herein specified apply to each respective motion picture licensed hereunder according to the classification thereof by the Distributor, as above provided, and such license fees are not average license fees, regardless of the number of such motion pictures that may be released by the Distributor during the year commencing September 1, 1940 and ending August 31, 1941.

The Exhibitor agrees to charge minimum admission prices per person to said theatre on the respective exhibition dates thereat of the motion pictures licensed hereunder as follows:

Evenings (After 6:30 P. M.): Adults, Orchestra 40 Balcony 40 Children, Orchestra 10 Balcony 10

Matinees (Before 6:30 P. M.): Adults, Orchestra 25 Balcony 25, Children, Orchestra 10 Balcony 10

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right; (a) to immediately terminat the license of the motion picture then being exhibited and or of all the remaining motion pictures not theretofore exhibited hereunder, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture and or motion pictures shall forthwith terminate and revert to the Distributor and the Distributor may, at its option, declare such failure or refusal a breach of the entire contract entitling the Distributor to recover from the Exhibitor as damages therefor the license fees payable in respect of all motion pictures not theretofore exhibited hereunder; or (b) provided the exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of "clearance" is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the

"run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof; and (d) if the license fee of any such motion picture is to be computed either in whole or in part upon a percentage of the gross admission receipts of said theatre, then the Exhibitor shall account to the Distributor for all admissions to said theatre during the exhibition of such motion picture upon the basis of the said admission prices specified above.

It is expressly understood and agreed that the above minimum admission prices are exclusive of any State, Federal or local tax which now is or may be imposed upon admission to the theatre or theatres licensed hereunder.

If the Exhibitor is granted hereunder a second or subsequent "run", the Exhibitor agrees to exhibit any motion picture licensed hereunder for any earlier run if the Distributor shall so require.

It is agreed that the term "gross receipts" as used in this agreement shall be deemed to mean all sums received by the Exhibitor for admission to the theatre or theatres licensed hereunder on the date or dates of exhibition of the respective motion pictures licensed hereunder, excluding only therefrom any tax imposed by governmental authority expressly upon admissions to said theatre or theatres which is required to be collected by the Exhibitor.

The Exhibitor in all advertising and exploitation of each motion picture licensed hereunder, shall advertise and announce each such motion picture as "A Paramount Picture" or as otherwise directed by Paramount, and shall otherwise adhere to the form of announcement contained in the advertising matter issued by Paramount in respect of each such motion picture.

If, with respect to any motion picture licensed hereunder the date or dates of exhibition selected, designated or otherwise agreed upon shall be a number of days less than the maximum number specified in the Schedule hereof, then the license hereby granted for such motion picture shall be automatically limited to the number of days or dates of exhibition so selected, designated or otherwise agreed upon, regardless of the number of days specified in said Schedule.

The license hereby granted for the number of days specified in the Schedule hereof for each motion picture shall not be deemed to include:

(a) any right of exhibition at any time during said exhibition period prior to 6:00 A. M. on the date or first date of exhibition herein provided for unless exhibition prior to 6:00 A. M. on said date or first exhibition date is expressly granted in writing;

(b) any right of exhibition at any time other than on the respective date or dates of exhibition selected, designated or otherwise agreed upon, as provided herein, and confirmed in writing by the Distributor;

(c) any right of exhibition other than by means of a print of any such motion picture furnished to the Exhibitor by the Distributor for the express purpose of exhibition hereunder in the theatre or theatres selected, designated or otherwise agreed upon as herein provided and confirmed in writing by the Distributor.

It is agreed that the Distributor may at its option deliver to the Exhibitor C.O.D. any motion picture deliverable hereunder, and may add to said C.O.D. the amount of any past due indebtedness owing under this or any other agreement by the Exhibitor to the Distributor.

Exhibition arrangement, as per letter of agreement.

Run: Clearance:

Exchange Chicago Zone O (End of Schedule)

Salesman Office

IN WITNESS WHEREOF Warner Bros. Circuit Management Corp., and Exhibitor operating the Avalon Theatre, located at 79th & Stony Island in the (City and State) Chicago, Ill., has on (Date) 11-18-40 executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion picture specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Accepted

Date

PARAMOUNT PICTURES INC.

By ALLEN USHER

WARNER BROS. CIRCUIT MANAGEMENT CORP.

Exhibitor

By (Illegible)

Exhibitor's Copy.

(Page 1)

3197 Paramount Exhibition Contract.

(This is not a Standard License Agreement. It is Paramount's Individual Form)

Agreement of license under copyright made in one or more counterparts between Paramount Pictures Inc., a New York Corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor (hereinafter named and referred to as the "Exhibitor," operating the theatre hereinafter designated), party of the second part, Witnesseth: The parties hereto agree as follows:

License—First. The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and trailers and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of such motion pictures a licence from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical composition. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Term and Warranty—Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to ex-

hibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in Clause Fourteenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver—Second: (b) If the Distributor shall fail or refuse to deliver, during the term hereof, any of the motion pictures licensed hereunder, excepting those which may be eliminated as provided in Clause Fourteenth hereof, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof, or shall deliver to the Exhibitor a print of any motion picture, which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second (a), the Distributor shall pay the damage so caused (which payment shall in no event exceed the liquidated damages hereinafter provided in this Subdivision (b) and if such damage cannot be definitely computed, shall pay as liquidated damages and in no event in excess thereof, a sum equal to the license fee specified for each such motion picture; or a sum computed as provided in Clause Third (c) hereof if the license fee for any such motion picture is to be determined in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof, or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor, unless notice of such claim shall have been given by the Exhibitor to the Distributor's Exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor on the same day to the Distributor's said Exchange.

Payment—Third: (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums speci-

fied in the Schedule at least three (3) days in advance of the date of delivery of the print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

(b) Percentage Bookings.—If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. It is further agreed that if the Exhibitor's operating expense is an element in the computation of the license fees payable to the Distributor hereunder, the right herein granted to the Distributor to audit the Exhibitor's books and records shall include the right to examine all of such books and records relating to the Exhibitor's operating expenses. Such right of access and examination of the Exhibitor's

books and records limited as aforesaid, shall continue for a period of one (1) year after the receipt by the Distributor of each such statement. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceedings or litigation in respect to this license. It is agreed that the acceptance by the Distributor of any sum tendered by the Exhibitor in full payment of any license fee payable hereunder, based upon a percentage of the admission receipts of said theatre, shall not estop or prevent the Distributor from thereafter disputing the correctness of such payment. It is further agreed that any and all sums of money accruing to the Distributor hereunder as its share of the gross receipts during the exhibition of any motion picture hereunder, shall be held by the Exhibitor in trust for the Distributor until payment thereof to the Distributor as hereinbefore provided.

(c). Liquidated Damages—Failure to Exhibit: If the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fourteenth hereof, then and in such event, the Exhibitor shall pay as liquidated damages a sum equal to the fixed sum or sums herein specified as the rental for each such motion picture, and if the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion pictures, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pic-

tures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to seventy-five (75%) per cent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints—Fourth: (a) After each motion picture licensed thereunder is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver, as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show", "tryout", "preview", or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit said motion pictures in the order of their availability hereunder and in accordance with the exhibition arrangement, if any, set forth in the Schedule hereof, and the Distributor shall be under no obligation to deliver a print of any of said motion pictures out of the order of availability hereunder.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immeidately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the

same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceedings based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints—Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels", upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the

Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Dates—Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of each of said motion pictures is received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor may designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run—Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or with-

in the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Advertising Prior to Run—Eighth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other Exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor.

Acceptance by Distributor—Ninth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after date thereof if lo-

cated West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing—Tenth: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served, provided such change or modification does not change or modify the run, and or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

Assignment on Sale of Theatre—Eleventh: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor, but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing. It is agreed however, that the Distributor, without consent of the Exhibitor, may assign this license to any subsidiary or affiliate of Paramount Pictures Inc. now or hereafter formed, which shall distribute the motion pictures licensed hereunder in the territory served by the Distributor's Exchange serving the Exhibitor's theatre hereunder.

Taxes—Twelfth: The Exhibitor shall pay to the Distributor upon demand any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery, possession and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordi-

nance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance—Thirteenth: If the Exhibitor shall be prevented from exhibiting any of said motion pictures hereunder because of strikes, fires, insurrection, Acts of God the public enemy, public calamity, or order of any court of competent jurisdiction, not due to the Exhibitor's fault, or for any similar cause beyond the control of the Exhibitor, then such failure of performance in respect to each such motion picture available for exhibition hereunder during the period of such disability shall be excused and each such photoplay shall thereupon be excepted and excluded from this license and agreement.

If the Distributor shall be delayed or prevented from performance of this agreement because of strikes, fires, insurrection, Acts of God, the public enemy, public calamity, court orders, censor rulings, delays of any common carrier, or of the U. S. Postal authorities, delays in production, or any other reason beyond the control of the Distributor, then such delay or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor.

Option to Exclude—Fourteenth: (a) If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder, the Exhibitor shall have the right, provided the Exhibitor is not in material default hereunder, to exclude from this license agreement without payment of license fees therefor not to exceed twenty (20%) per cent of the total number of feature motion pictures licensed hereunder if the license fee of each thereof averages not more than $100; not to exceed fifteen (15%) per cent if the license fee of each thereof averages more than $100, but not more than $250; and not to exceed ten (10%) per cent if the license fee of each thereof averages more than $250.

(b) Such privilege of exclusion shall be exercised only upon the following terms and conditions:

(1) The Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures within ten (10) days after the Distributor shall mail to the Exhibitor the notice of availability thereof.

(2) Exclusions shall be made only from the lowest price classification set forth in this license agreement.

(c) In computing the number of feature motion pictures which may be excluded hereunder, fractions of one-half or more shall be regarded as one and fractions of less than one-half shall not be counted.

(d) In computing the average license fee of all feature motion pictures licensed hereunder, the license fees of feature motion pictures based in whole or in part upon a percentage of the admission receipts of the theatre licensed hereunder shall be included at the average of the license fees of all of the Distributor's feature motion pictures distributed during the immediately preceding motion picture season which were exhibited upon a percentage basis at the said theatre. If none of the Distributor's feature motion pictures was so exhibited on a percentage basis at such theatre during such period, and if there are feature motion pictures licensed hereunder upon a percentage basis, then the average license fee of all feature motion pictures licensed hereunder shall for the purpose of computing the number of feature motion pictures which the Exhibitor may exclude hereunder shall be deemed to be

(e) Upon exclusion of any feature motion picture the license therefor shall terminate and all rights thereto shall revert to the Distributor and such exclusion shall be charged against the number of exclusions to which the Exhibitor may be entitled, whether or not a new license agreement for the exhibition of such feature motion picture is subsequently entered into by the Exhibitor.

(f) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement the privilege of exclusion shall forthwith be revoked.

Remedies—Fifteenth: If the Exhibitor shall fail or refuse to select the exhibition date or dates of any motion picture as provided in Clause Sixth hereof, or if the Exhibitor shall fail or refuse to exhibit any such motion picture on the date or dates designated by the Distributor

if designated as provided in paragraph 3 of said Clause, or if the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, or if the Exhibitor shall otherwise fail or refuse to perform any of the terms and conditions on the part of the Exhibitor to be performed hereunder or if the Exhibitor shall fail or refuse to perform any other license agreement with the Distributor, then upon the happening of any one or more of said events, the Distributor may at its option, (1) suspend the delivery of additional motion pictures hereunder, until such default or defaults should cease and be remedied, or (2) declare this license agreement breached by the Exhibitor entitling the Distributor to recover from the Exhibitor as liquidated damages for such breach the license fees payable in respect of all motion pictures not theretofore exhibited under this agreement, and the Distributor shall be under no obligation thereafter to deliver or offer any motion picture or pictures hereunder. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudices to any right or remedy of the Distributor against the Exhibitor at law or in equity and or otherwise provided for in this license agreement.

Road Shows—Sixteenth: The Distributor shall have the right to exhibit and or cause to be exhibited as a "road show" at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine provided, however, that such motion pictures shall be so

exhibited only at theatres to which an admission price for evening performances, during such exhibition thereof, of not less than $1.00 shall be charged for the majority of orchestra seats thereof. As respects any photoplay so exhibited as a "road show" the license herein granted and the "run and/or clearance", if any, specified herein shall be subject and subordinate in all respects to all such "road show" exhibitions, and each such motion picture so "road shown" shall not be deemed available for exhibition hereunder until after the completion of all "road show" exhibitions in the United States and only if generally released during the period beginning September 1st, 1940 and ending August 31st, 1941.

Cutting or Alteration of Prints—Seventeenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut, or alter any print, excepting to make necessary repairs, thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor, however, may cut the print of a news reel, and in such case shall completely restore all arts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Reissues—Foreigns—Eighteenth: (a) It is agreed that there is excepted and excluded from this license all motion pictures which are foreign produced by a foreign producer, except such foreign produced motion pictures which are produced by any subsidiary or affiliate of Paramount Pictures Inc. and or the production of which is financed by Paramount Pictures Inc. or any subsidiary or affiliate thereof.

(b) It is further agreed that there is excepted and excluded from this license all reissues of old negatives or old negatives retitled.

Advertising Accessories—Nineteenth: The Exhibitor agrees to lease from the Distributor or the Distributor's authorized licensee for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories: (All advertising accessories used by the Exhibitor in connection with the exhibition hereunder of each of the motion pictures licensed hereunder.)

Optional Arbitration Clause—Optional Clause: The following Clause Twentieth is optional with the parties hereto. If it is desired to make such Clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph, and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Clause Twentieth hereof, providing for voluntary arbitration of disputes and controversies arising hereunder, shall be included as part of this license.

Representative of the Distributor duly authorized to agree to the following Clause Twentieth.

Exhibitor.

Arbitration—Twentieth: The Exhibitor and the Distributor respectively, freely and voluntarily, agree that, as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all disputes and controversies arising hereunder for determination by arbitration as follows (hereby expressly waiving the oath of the arbitrators):

The party desiring to submit any dispute or controversy arising hereunder to arbitration shall at the time such disute or controversy arises appoint an arbitrator and give written notice by registered mail of such appointment to the other party. The other party within five (5) days after the date of the receipt of such notice of appointment shall appoint a second arbitrator and give written notice by registered mail of such appointment to the first party. The two arbitrators so selected shall within three (3) business days after the appointment of such second arbitrator select a third arbitrator and the three (3) arbitrators shall thereupon meet and determine the matter. The hearing of any such controversy shall be in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. The arbitrators appointed hereunder shall proceed forthwith to hear and

determine the matter or matters referred to them for determination and the evidence submitted to them and may require the parties to appear and produce such accounts, documents and witnesses as the arbitrators may require.

The arbitrators shall have the power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and or find that the same has been breached in whole or in part and or that damages on such account shall be paid. No person shall hear or determine any controversy in which he has either directly or indirectly a personal or financial interest and any person having such interest shall be disqualified to act.

If either party fails or refuses to appoint the arbitrator to be appointed by such party within the time prescribed by the provisions of this Clause, or if any arbitrator so named shall fail or refuse to act or be unable to act or unqualified to serve and another arbitrator qualified and then available to act is not then appointed, then and in such event, the party requesting such arbitration may, at its election: (1) abandon all further arbitration and deem such action by the other party a material breach of this license agreement and may terminate this license agreement in addition to and without prejudice to any other right or remedy which the party so terminating may have at law or in equity, or as otherwise provided for in this license agreement, or (2) request another arbitrator to be appointed by the then acting Arbitration Committee of the American Arbitration Association, or if there be none, by the then acting President or Secretary of the Chamber of Commerce of the State in which is located the exchange from which the Exhibitor is served.

If the arbitrators appointed by or for the respective parties shall fail to agree upon a third arbitrator, or if such third arbitrator fails or refuses to act or be unable or unqualified to serve, such third arbitrator shall be appointed by the then acting Arbitration Committee of the American Arbitration Association, or if there be none, by the then acting President or Secretary of the Chamber of Commerce of the State in which is located the exchange from which the Exhibitor is served. The parties hereto agree to abide by and forthwith comply with any decision and or award of the arbitrators or a majority of them, and consent that any such decision or award shall be enforced in or by any

court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force. The arbitrator appointed hereunder, if any, by the Arbitration Committee of the American Arbitration Association or the President or Secretary of the Chamber of Commerce of a State shall reside in the exchange city wherein the hearing is to be had hereunder.

Each of the parties hereto without notice to the other may apply to any court having jurisdiction to make this agreement to arbitrate, a rule or order of such court. If either party fails or refuses to submit to arbitration any dispute or controversy hereunder, the other party may apply to a court of competent jurisdiction in the State in which such hearing would otherwise not be had for an order to proceed to arbitrate, in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct.

(Continued on reverse side)

3198 PLAINTIFFS' EXHIBIT 144.

Film License Agreement relating to 1937-38 and 1938-39 seasons dated September 29, 1937, between Loew's Inc. and Warner Bros. Circuit Management Corporation.

Endorsed: Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

3199	Theatre	(Illegible)
	Avalon	8876-F-S-T
	Beverly	8877-F-S-T-X
	Capitol	8878-F-S-T
	Cosmopolitan	8879-F-S-T
	Frolic	8880-F-S-T
	Grove	8881-F-S-T-X
	Hamilton	8882-F-S-T
	Highland	8883-F-S-T-X
	Jeffery	8884-F-S-T
	Lexington	8885-F-S-T
	Oakland Sq.	8887-F-S-T
	Ogden	8888-F-S-T
	Shore	8915-F-S-T
	Stratford	8916-F-S-T
	Symphony	8917-F-S-T
	Rhodes	8889-F-S-T
	Metropolitan	8886-S-T

3200 Page #1

Rider to Contracts, Forms #928 and #946, Attached Hereto.

(Consisting of pages 1-2-3-4-5-6-7-8-9-10-11-12-13)

September 7, 1937.

The following is agreement between Warner Brothers Circuit Mgt. Corp. and Loew's Incorporated for 1937-38 and 1938-39 features, junior features, trailers and newsreels.

It is understood and agreed the terms and conditions as set forth in the attached regular exhibition contracts, Forms #928 and #946, and specifically the conditions set up in the "Optional Arbitration Clauses," are to apply for the 1937-38 features, junior features, trailers and newsreels.

Terms and conditions of the regular printed forms of exhibition contracts used by Loew's Incorporated for the 1938-39 season are to apply for the 1938-39 product.

Playing position and admission prices, as per schedule attached.

Clearance, as per schedule attached.

Feature commitments and terms, as per schedule attached.

Score charges, as per schedule attached.

Junior feature commitments and prices, as per schedule attached.

Trailer prices, as per schedule attached.

Newsreel commitments and prices, as per schedule attached.

It is understood and agreed that four months after the opening of the Rhodes Theatre there is to be a review and revision as it applies to the Rhodes and the Grove Theatres.

It is understood and agreed that the "roadshowing," "tryout," "preview" and or "pre-release" of any motion picture during the period shall not be deemed a general release of said motion picture; and that any motion picture "roadshown" by Loew's at any time during said period in the territory served by the Exchange of Loew's serving Exhibitor's theatre shall upon notice to Exhibitor sent pursuant to the "Roadshows" provision of the an-

nexed printed form of feature contract be deemed excluded from this agreement.

It is agreed that pictures (even though released by Loew's during the period of this agreement) as to which Loew's is required by contract to obtain the consent or approval of the producer thereof or any other party to the terms and conditions of the licensing and or exhibition thereof, are excluded herefrom unless Loew's obtains such approval for their exhibition hereunder. Loew's agrees to use its best efforts to obtain such approval.

It is understood that wherever reference is made herein to one-reel short product same means a subject of not less than seven hundred (700) and not more than one thousand (1000) linear feet; and that two-reel short product means a subject of not less than fifteen hundred (1500) or more than two thousand (2000) linear feet; all of such figures being approximate.

It is agreed that Loew's may, if it so desires, cease the distribution of any and all short subjects and or News and/or Trailers at any time during the period without in any wise affecting this agreement as respects all other motion pictures licensed hereunder.

It is agreed that in the event in any season Loew's

3201 # 2—

adopts a policy of distributing thirty (30) or less pictures as its feature output of the season, the rental terms and playing time herein provided for features shall be revised to a fair and reasonable basis, and in the event the parties hereto are unable within thirty (30) days after Loew's makes public announcement of its intention to release thirty (30) or less feature pictures, to agree upon fair and reasonable terms and playing time, this agreement may be terminated by either party by written notice to such effect to the other, such termination to be effective with the delivery of the last picture of the then current season. The announcement herein required shall be made by Loew's not later than sixty (60) days preceding the beginning of the season, which announcement shall state the number of feature pictures Loew's intends to release during the season in question, and shall be effective only if made generally to the trade in two or more motion picture trade papers.

It is agreed that if at any time during the term of this agreement Loew's distributes "television productions"

which term means and includes motion pictures distributed for exhibition or projection—with or without sound—by television, and/or performances by actors, singers and/or others for transmission and projection—with or without sound—by television; such term television, wherever used, including any new method similar to television), this agreement shall be re-negotiated as to "television productions" and if the parties hereto shall not within thirty (30) days after Loew's notifies Exhibitor in writing, or makes announcement to the trade generally by publication in two (2) or more trade papers, of its intention to so distribute "television productions" have entered into a new agreement as to such "television productions" such so-called "television productions" shall not be included in this agreement and Loew's may exhibit and or license to others for exhibition all "television productions" free from any claim by Exhibitor thereto; but this agreement shall nevertheless continue in full force and effect with respect to all straight sound motion pictures released by Loew's during the balance of the period of this agreement. It is expressly understood and agreed that the provisions of the paragraph hereof headed "Arbitration" shall not apply as to terms for "television productions."

It is agreed that the amount of flat rentals (and guarantees, if any) for the feature motion pictures, short subjects, newsreels, trailers, and score charges, provided to be paid herein are based upon the present value in gold or the lawful monies of the United States of America, and that if during the period the value of said monies shall be decreased and such decrease shall be reflected in increased prices charged for admission to said theatre, such flat rentals and guarantees, and score charges, shall from time to time upon the request of Loew's be increased in the same relative proportion as such increase in the then prices charged for admission to the theatre shall bear to the present prices charged for admission thereto.

Any waiver by either party of any of its rights hereunder shall not be deemed a continuing waiver and shall not estop or prevent such party from thereafter enforcing such rights.

This agreement is entire and complete, and no representations or warranties of any kind have been made by either party hereto to the other, except as in this agreement expressly set forth. It is agreed that neither party is the

agent or partner of the other party, and neither party hereto shall be liable for or bound by any representations of or by the other.

It is agreed that Loew's may exhibit and or license to any other exhibitor for exhibition in any manner Loew's sees fit, free from any claim by Exhibitor hereto, any and all motion pictures excepted and or excluded as herein provided.

It is agreed that this agreement shall be construed and interpreted according to the Laws of the State of New York.

It is agreed that Loew's shall have the right to assign this agreement to any parent, affiliated or subsidiary corporation.

It is agreed that any termination herein provided

3202 Sheet 3

for shall be without prejudice to any of Loew's rights or remedies hereunder and or at law or in equity.

It is agreed that the terms and conditions hereof, together with the terms and conditions of the annexed printed forms of exhibition contract for the respective product (features, junior features, trailers, score charges and newsreels), constitute the agreement between Exhibitor and Loew's, it being understood and agreed that if any of the provisions of any of such printed forms shall be contrary to or inconsistent with any of the provisions hereof, the provisions hereof shall control.

In witness whereof the parties hereto have caused this agreement to be signed, executed and delivered the day and date first above written.

Stamped: Sep 22 1937

Loew's Incorporated
By G. W. Saunders
Warner Bros. Circuit Management Corp.
By Alex Halperin

3203 PLAINTIFF'S EXHIBIT 47

ADMISSIOM PRICE SCHEDULE

Theatre	Week of Release	Children Mat. & Eve.	Adults to 6:30 P. M.	Adults after 6:30 P. M.
Avalon	A-B	A-10¢	30¢	50¢
		B-10¢	25¢	40¢
Capitol	A-B	A-10¢	30¢	50¢
		B-10¢	25¢	40¢
Beverly	C	10¢	20¢	30¢
Cosmopolitan	1st	10¢	15¢	25¢
Frolic	1st	10¢	15¢	25¢
Grove	C	10¢	20¢	30¢
Hamilton	2nd	10¢	15¢	20¢
Highland	C	10¢	20¢	30¢
Jeffery	C	10¢	20¢	30¢
Lexington	1st	10¢	15¢	25¢
Oakland Square	1st	10¢	15¢	25¢
Ogden	C	10¢	20¢	30¢
Shore	1st	10¢	15¢	25¢
Stratford	C	10¢	20¢	30¢
Symphony	1st	10¢	15¢	25¢
Rhodes	C	10¢	20¢	30¢

Sunday and holiday adult admission price, same all day as evening weekday price.

Theatre	FEATURE COMMITMENTS AND PRICES: 6 at 30% and 6 at 25% of gross	(5) Flat Rental Specials				Regulars			Maximum No. Pictures that can be eliminated (from lowest Group) Based on 52 releases
Beverly	" On Pref. Chnge—or 4/10 of Wk	$225 00 ea.	2/3 days	Balance		$150 00 ea.	2/3 days		10
Cosmopolitan	" 2 days (May eliminate if played in Capitol)	80 00	2 "	"		50 00	2 "		5
Frolic	" On Pref. Chnge—or 3/10 of Wk	80 00	2 "	"		40 00	2 "		5
Grove	" " " " 4/10 " "	125 00	2/3 "	"		75 00	2/3 "		10
Jeffery	" " " " 4/10 " "	250 00	2/3 "	"		170 00	2/3 "		10
Hamilton	" 2 days	50 00	2 "	"		25 00	2 "		5
Highland	" On Pref. Chnge—or 4/10 of Wk	225 00	2/3 "	"		150 00	2/3 "		10
Lexington	" " " " " 3/10 " "	50 00	2/3 "	"		25 00	1/2 "		5
Oakland Square	" " " " " 3/10 " "	60 00	2 "	"		35 00	2 "		5
Shore	" " " " " 3/10 " "	150 00	2 "	"		75 00	2 "		5
Stratford	" " " " " 3/10 " "	200 00	2/3 "	"		125 00	2/3 "		
	(Stratford Theatre is to play a minimum of (22) pictures)								
Symphony	" On Pref. Chnge—or 3/10 of Wk	125 00	2 "	"		70 00	2 "		5
Ogden	" " " " " 4/10 " "	175 00	2/3 "	"		100 00	2/3 "		10
Rhodes	" " " " " 4/10 " "	175 00	2/3 "	"		125 00	2/3 "		10

NOTE

RHODES Theatre—Any pictures available prior to opening of theatre may be eliminated; thereafter elimination as per this schedule to apply on proportionate basis.

JEFFERY Theatre—25% reduction on pictures played repeat on Tower; 33-1/3% reduction on pictures played repeat on Avalon Theatre.

HIGHLAND Theatre—33-1/3% reduction on pictures played repeat on Capitol Theatre.

STRATFORD Theatre—On percentage pictures played in the Southtown, the exhibitor may eliminate or may play same 3/10ths of the week. Flat rental pictures played in Southtown may be eliminated or played at 50% reduction.

COSMOPOLITAN Theatre—Flat rental pictures played in Capitol Theatre may be eliminated or played at 50% reduction.

LEXINGTON Theatre—On pictures played in Maryland or Tower on Sunday change, the exhibitor is privileged to play such pictures in the Lexington Theatre two days, either Sunday-Monday, midweek, or Friday-Saturday. (As per Mr Shirley's letter of June 3, 1935.)

For all extra playing time received on percentage pictures in each theatre, exhibitor to receive extra playing time on flat rental specials without charge.

In the event MGM releases less than (52) pictures in each 52 week period, the number of pictures the exhibitor can eliminate shall be reduced proportionately. It is further understood and agreed the exhibitor cannot eliminate more than one out of each ten pictures released where the exhibitor has five-picture elimination privilege and not more than two out of each ten pictures released where the elimination privilege is ten pictures; except by mutual agreement to do otherwise.

Plaintiff's Exhibit No. 111.

3207

3205 Feature Commitment and prices—= 2

Avalon Theatre—Spotbooking:

Any of the (12) percentage pictures clear of the Tivoli and day and date with the Southtown, $1250.00 each, 7 days; $625.00 each, 3-4 days.

If repeat on the Tivoli, $1000.00 each, 7 days; $500.00 each, 3-4 days.

Any regular pictures repeat on Tivoli, $750.00 each, 7 days; $375.00 each, 3-4 days.

Any regular pictures clear of the Tivoli and day and date with the Southtown, $1000.00 each, 7 days; $500.00 each, 3-4 days.

Any pictures repeat on Tivoli and Southtown, $750.00 each, 7 days; $375.00 each, 3-4 days.

Capitol Theatre—Spotbooking:

Any of the (12) percentage pictures repeat on the Tivoli, $1000.00 each, 7 days; $500.00 each, 3-4 days.

Any regular pictures repeat on Tivoli, $750.00 each, 7 days; $375.00 each, 3-4 days.

Any pictures repeat on Tivoli and Southtown, $750.00 each, 7 days; $375.00 each, 3-4 days.

Note—

Extra days on flat rental pictures to be fifty per cent (50%) of the pro rata daily rate for each additional day. (Except Avalon or Capitol.)

Exhibitor is to be allowed to deduct the cost of the second feature played with MGM percentage pictures, before computing MGM's share of the receipts, such deduction not to exceed the lowest flat rental price set up herein for MGM pictures for the theatre in question.

3206

PLAINTIFF'S EXHIBIT 00

SHORT SUBJECT SCHEDULE

	Black & White Two-Reels		Colored Two-Reels		Black & White One-Reels		Colored One-Reels	
Avalon	7 days	$100 00	7 days	$125 00	7 days	$50 00	7 days	$62 50
Spot Booking	3-4 "	50 00	3-4 "	62 50	3-4 "	25 00	3-4 "	31 25
Beverly	2-3 days	20 00	2-3 days	25 00	2-3 days	10 00	2-3 days	12 50
	4 "	23 30	4 "	29 13	4 "	11 65	4 "	14 56
Capitol	7 days	100 00	7 days	125 00	7 days	50 00	7 days	62 50
Spot Booking	3-4 "	50 00	3-4 "	62 50	3-4 "	25 00	3-4 "	31 25
Cosmopolitan	2 days	12 50	2 days	15 63	2 days	5 00	2 days	6 25
	3 "	15 60	3 "	19 50	3 "	6 25	3 "	7 81
Frolic	2 days	10 00	2 days	12 50	2 days	5 00	2 days	6 25
	3 "	12 50	3 "	15 63	3 "	6 25	3 "	7 81
Grove	2-3 days	20 00	2-3 days	25 00	2-3 days	10 00	2-3 days	12 50
	4 "	23 30	4 "	29 13	4 "	11 65	4 "	14 56
Hamilton	2 days	7 50	2 days	9 38	2 days	5 00	2 days	6 25
	3 "	9 35	3 "	11 69	3 "	6 25	3 "	7 81
Highland	2-3 days	20 00	2-3 days	25 00	2-3 days	10 00	2-3 days	12 50
	4 "	23 30	4 "	29 13	4 "	11 65	4 "	14 56
Jeffery	2-3 days	20 00	2-3 days	25 00	2-3 days	10 00	2-3 days	12 50
	4 "	23 30	4 "	29 13	4 "	11 65	4 "	14 56
Lexington	2 days	10 00	2 days	12 50	2 days	5 00	2 days	6 25
	3 "	12 50	3 "	15 63	3 "	6 25	3 "	7 81
Metropolitan	2 days	15 00	2 days	18 75	2 days	7 50	2 days	9 38
Spot Booking	3 "	20 00	3 "	25 00	3 "	10 00	3 "	12 50
Oakland Sq	2 days	12 50	2 days	15 63	2 days	5 00	2 days	6 25
	3 "	15 60	3 "	19 50	3 "	6 25	3 "	7 81
Ogden	2-3 days	15 00	2-3 days	18 75	2-3 days	10 00	2-3 days	12 50
	4 "	17 50	4 "	21 88	4 "	11 65	4 "	14 56
Rhodes	2-3 days	20 00	2-3 days	25 00	2-3 days	10 00	2-3 days	12 50
	4 "	23 30	4 "	29 13	4 "	11 65	4 "	14 56
Shore	2-3 days	17 50	2-3 days	21 88	2-3 days	7 50	2-3 days	9 38
Stratford	2-3 days	20 00	2-3 days	25 00	2-3 days	10 00	2-3 days	12 50
	4 "	23 30	4 "	29 13	4 "	11 65	4 "	14 56
Symphony	2-3 days	12 50	2-3 days	15 63	2-3 days	5 00	2-3 days	6 25

NOTE: While exhibitor is double featuring he may eliminate 50% of the number of reels coming available for him.

STRATFORD THEATRE: To play a minimum of (12) Two-Reels, and (40) One-Reels. Elimination of 50% while double feature policy exists.

3207 Audioscopik Schedule

Avalon	3-4 days—50.00
Spot Booking	
Beverly	2-3 days—20.00
Capitol	3-4 days—50.00
Spot Booking	
Cosmopolitan	2 days— 7.50
Frolic	2 days—10.00
Grove	2-3 days—20.00
Hamilton	2 days— 7.50
Highland	2-3 days—20.00
Jeffery	2-3 days—20.00
Lexington	2 days—10.00
Metropolitan	2 days—15.00
Spot Booking	
Oakland Square	2 days— 7.50
Ogden	2-3 days—15.00
Rhodes	2-3 days—20.00
Shore	2-3 days—17.50
Stratford	2-3 days—20.00
Symphony	2-3 days— 7.50

Note:—50 % of the pro rata daily rate for extra days.

3208 Trailer Schedule

Avalon	10.00— 7 days pictures
	5.00—2-4 days pictures
Capitol	10.00— 7 days pictures
	5.00—3-4 days pictures
Beverly	3.00 each
Cosmopolitan	3.00 each
Frolic	3.00 each
Grove	3.00 each
Hamilton	3.00 each
Highland	3.00 each
Jeffery	3.00 each
Lexington	3.00 each
Oakland Square	3.00 each
Ogden	3.00 each
Rhodes	3.00 each
Shore	3.00 each
Stratford	3.00—2-3 days pictures
Symphony	3.00 each
Metropolitan	3.00 each
Spot Booking	

PLAINTIFF'S EXHIBIT 47

SCORE CHARGE SCHEDULE

on—Spot Booking	3-4 days	$25.00	7 days	$50.00
verly	1 day	5.00	2-3 days—$10.00 $2.50 each additional day	
apitol—Spot Booking	3-4 days	25.00	7 days	$50.00
osmopolitan	2 days	5.00	$2.50 each additional day	
olic	1 day	3.50	2 days—$5.00 $2.50 each additional day	
rove	1 day	5.00	2-3 days—$10.00 $2.50 each additional day	
amilton	1 day	3.50	2 days—$5.00 $2.50 each additional day	
ighland	1 day	5.00	2-3 days—$10.00 $2.50 each additional day	
effery	1 day	5.00	2-3 days—$10.00 $2.50 each additional day	
exington	1 day	3.50	2 days—$5.00 $2.50 each additional day	
Oakland Sq	2 days	5.00	$2.50 each additional day	
Ogden	1 day	5.00	2-3 days—$10.00 $2.50 each additional day	
Rhodes	1 day	5.00	2-3 days—$10.00 $2.50 each additional day	
Shore	1 day	3.50	2 days—$5.00 $2.50 each additional day	
Stratford	1 day 2 days	5.00 10.00	3 days—$15.00 $5.00 each additional day	
Symphony	2 days 3 days	7.00 10.00	$2.50 each additional day	

3210

NEWS REEL SCHEDULE

Theatre	Issues	Rental	Age	Days	Playdays	Starting Date
Beverly	1	$10.00	1-2-3	3	T-F-S	6-17-18-37
Grove	2	10.00 10.00	5-6-7 4-5-6	3 3	T-F-S S-M-T	2-3-5-38 1-30-2-1-38
Highland	2	10.00 10.00	5-6-7 4-5-6	3 3	T-F-S S-M-T	2-3-5-38 1-30-2-1-38

3211 Schedule of Clearance—Seasons 1937-38 and 1938-39.

The Exhibitor agrees through the term of the contract to maintain the following minimum admission for week of release played:

"A" Pre-release Week:

Minimum adult admission per person, 39c; matinee until 6:30 p. m.; after 6:30 p. m., 50c.

"B" Pre-release Week:

Minimum adult admission per person, 25c; matinee until 6:30 p. m.; after 6:30 p. m., 40c.

"C" Pre-release Week:

Minimum adult admission per person, 20c; matinee until 6:30 p. m.; after 6:30 p. m., 30c.

First Week General Release:

Minimum adult admission per person, 15c; matinee until 6:30 p. m.; after 6:30 p. m., 25c.

Second and Third Week General Release:

Minimum adult admission per person, 15c; matinee until 6:30 p. m.; after 6:30 p. m., 20c per person.

Minimum admission for children at all times to be not less than 10c per person.

It is mutually agreed evening admission price shall prevail for all performances on Sundays and legal holidays.

Avalon

The Avalon may play in "A" pre-release week seven days following Tivoli, day and date with Southtown, or in the event photoplays not played Tivoli, may play day and date with Southtown. Photoplays not played Tivoli or Southtown, may play in fourth, fifth or sixth week following first run Loop engagements. Clearance on all other south side theatres excluding the Tivoli and Southtown, and including theatres in southern part of Cook County, Gary, Hammond and Indiana Harbor, Indiana. No other theatre in this prescribed territory to play earlier than "B" pre-release week which is as follows: if first south side "A" pre-release theatre plays in fourth week after Loop showing, fourteen days after last day; if first south side

"A" pre-release theatre plays in fifth week after Loop showing, fourteen days after last day; if first south side "A" pre-release theatre plays in sixth week after Loop showing seven days. No theatre other than Piccadilly, Stratford, Tower, Capitol, Metropolitan and Regal to play in "B" pre-release week. Hammond and Gary, Indiana, may play immediately following "A" pre-release run. Established "C" pre-release theatres to play in ninth week following Loop first run, and established general first week release theatres to play in tenth week after Loop first run. Tower and Capitol may play in pre-release "A" week if "A" week admission is charged.

Beverly

Beverly Theatre to play "C" week. Theatres located within the following territory not to play earlier than second week of Chicago city release: South boundary 119th Street; north boundary 80th Street; west boundary Kedzie Avenue, east boundary State Street.

Capitol

This theatre to play in regular "B" week of release with privilege of playing in "A" week, providing that regular "A" week admission charge prevails.

Cosmopolitan

First week Chicago general release. New Regent, Rex, E. A. R. to play second week general release. Hillside and Sunnyside to play third week general release.

3212 Frolic

First week general release. Pix to play third week general release. If the Harper Theatre charges 25c adult evening admission, said theatre to play in first week; if 20c adult admission evening is charge, said theatre to play in second week. Kenwood and Hyde Park to play in second week of release.

Grove

"C" week of Chicago release. State in Roseland, and Jeffery to play pre-release "C" Chicago release. Shore to play first week general release, Park Manor and Burnside to play third week general release. Ray and Stanley to play fourth week general release.

Hamilton

Second week of Chicago general release. Ray and Stanley to play fourth week of general release.

Highland

Pre-release "C" week. Blue Island and Harvey to play pre-release "C" Chicago release. New Regent and Rex to play second week general release. Hillside to play third week of general release.

Jeffery

Pre-release "C" Chicago release. Commercial, Shore and Jackson Park to play in first week of release. Chelten and Hamilton to play in second week of release. Ray and Stanley to play in fourth week of general release. Commercial may play in "C" pre-release week if 30c adult evening admission is charged.

Lexington

First week Chicago general release. Jackson Park to play in first week. Amo, Midway-Hippodrome, Drexel and Kimbark (62nd and Kimbark) to play in second week of release. Langley and Plaisance to play in third week general release. Woodlawn to play in third week of release.

Oakland Square

First week general release. Kenwood, Shakespeare and Hyde Park to play in second week. Indiana, Pix, Harmony to play in third week. Harper may play in first week if 25c adult evening admission is charged.

Ogden

"C" pre-release of Chicago release. Boulevard, Marquette and Highway to play in first week of release. New Regent, Rex and Ace to play in second week. Lynn, Halsted and Empress to play in third week of release.

Rhodes

Rhodes Theatre to play in "C" pre-release week. State in Roseland and Jeffery to play pre-release "C" Chicago release. Shore to play first week general release, Park Manor and Burnside to play third week general release. Ray and Stanley to play fourth week general release.

Shore

First week Chicago general release. Chelten and Hamilton to play in second week of general release. Ray and Stanley to play in fourth week of general release. Jackson Park to play in first week of release.

Symphony.

First week of release. Week and wee with Byrd Theatre. Ambassador, Iris, Plaisance and Park Theatre to play second week. Ohio to play in third week.

Stratford

"B" week or pre-release "C" week of Chicago release. Ogden to play in pre-release "C" week. Englewood and Harvard to play in first week. New Regent, Ace, Rex and Linden to play in second week. Lynn, Halsted and Empress to play in third week. Linden may play in first week in event subject not played Englewood Theatre.

Orpheum, Hammond, Ind.

Second run Hammond, Indiana. Thirty (30) days on third run in Hammond, Indiana, and Calumet City, Illinois. Pictures to be available thirty (30) days after first run in Hammond, Indiana.

Parthenon and Paramount, Hammond, Ind.

First run Hammond, Indiana. May play in "A" pre-release Chicago release, following Tivoli, Avalon and Southtown Theatres, but not later than "B" pre-release Chicago release. Thirty (30) days' clearance on subsequent runs in Hammond, Hessville, Indiana, and Calumet City, Illinois. First run Whiting, Indiana, Indiana Harbor, Indiana, and East Chicago, Indiana, may play immediately following first run Hammond, Indiana.

3213 Exhibition Contract

News

An M-G-M Release
Distributed by
Loew's Incorporated

Notice to Exhibitor: This is not a Standard form of Contract. It has been formulated individually by Distributor.

Agreement, made in one or more counterparts between Loew's Incorporated, a corporation (hereinafter referred to as the "Distributor"), party of the first part, and the exhibitor (hereinafter named and referred to as the "Exhibitor," operating the theatre or theatres hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as follows:

First: The Distributor hereby grants the Exhibitor, and the latter accepts, a license subject to the terms and conditions hereinafter stated, and those printed upon the reverse side hereof which are made a part of this contract to exhibit publicly in synchronism with recorded sound each of the News provided for in the Schedule at said theatre, only for the number of successive days in the said Schedule provided. This license is under the respective copyrights of said News and under any copyright which may be in force with respect to any matter included in such recorded sound.

If more than one theatre is hereinafter designated no News is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

Time and Place of Exhibition

Second: The Exhibitor agrees to exhibit under said license said newsreels with recorded sound, but only at the theatre herein specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not allow any positive print thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition of any such positive print at any other or place. Such license shall be specifically for such exhibition of such newsreels, and for no other purpose.

Unless otherwise expressly provided in the Schedule hereof, the license hereby granted shall not be deemed to include the right to exhibit any of the newsreels in whole or in part at any so-called midnight performance (viz., at any time between 12:01 A.M. and 6 A.M.).

Payment

Third: The Exhibitor agrees to pay for such license as to each of such newsreels the fixed sums herein specified at least (3) days in advance of the date of shipment from the Distributor's Exchange or from the last previous exhibitor of the positive print thereof.

It is agreed that all payments to distributor hereunder shall be made at the Exchange of Distributor out of which Exhibitor is served.

Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print and or sound records of any newsreel contracted for hereunder, payment of all amounts then due the Distributor by Exhibitor under this or any other exhibition contract(s) between the parties hereto and Distributor may require such payment of all sums then due by means of a C.O.D. shipment or otherwise.

Fourth: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule

Rider covering contracts for the 1937-38 and 1938-39 seasons is attached hereto and made part hereof.

(A) Exhibitor agrees to start playing of said News not later than the starting date specified in Column 3 above and to play (on the days of the week designated in Column 2 above) and or pay for each week, in sequence, the number of said News designated in Column 1 above.

It is further agreed that this contract covers the number of releases of News specified in Column 5 above and that the "original term" of this contract shall be deemed to be the period required for the playing in sequence of all such releases; and that this contract also covers the same number of releases of News released by Distributor in the like period immediately following the "original term" unless and until the newsreels to be released by Distributor in such further period are eliminated therefrom (and the con-

tract thereby cancelled as to same) by either party by notice in writing to the other sent by registered mail at least thirty (30) days prior to the expiration of the "original term", and that it also covers all releases of News released by Distributor in each succeeding like period unless and until the newsreels to be released in such succeeding periods are eliminated herefrom (and the contract thereby cancelled as to same) by either party by notice in writing to the other sent by registered mail at least thirty (30) days prior to the expiration of any such succeeding period.

(B) It is understood and agreed that no exclusive run nor any clearance, is granted to exhibitor with respect to any of said News.

(C) It is agreed that if the number of days of exhibition selected by Exhibitor and confirmed in writing by Distributor for any newsreel licensed hereunder shall be less than the maximum number of days specified in the Schedule hereof with respect to such newsreel, then regardless of the number of days specified in said Schedule the license hereby granted to Exhibitor as to such newsreel shall be limited to the number of days of exhibition so selected and confirmed, unless Exhibitor prior to the last playdate so confirmed by Distributor shall secure Distributor's consent in writing to exhibit such newsreel an additional day or days up to the maximum number of days specified in said Schedule.

It is further understood and agreed that the license hereby granted shall not be deemed to include—

(a) any right of exhibition of any newsreel licensed hereunder at any time other than on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such newsreel; nor

(b) any right of exhibition of any newsreel licensed hereunder other than by means of the print thereof furnished to Exhibitor by Distributor for the express purpose of exhibition on the date or dates of exhibition so selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such newsreel.

(End of Schedule)

Optional Arbitration Clause: Article Eighteenth hereof is optional with the parties hereto. If it is desired to make such Article a part of this license, Exhibitor and the duly

authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Article shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Article Eighteenth, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

Representative of the Distributor duly authorized to agree to Article Eighteenth.

Exhibitor: Warner Bros. Circuit Mgt. Corp.
A Corporation
By Alex A. Halperin,
General Manager

In Witness Whereof, Warner Bros. Circuit Mgt. Corp., the Exhibitor, operating the (theatres per attached), Theatre located at Street in the , has on September 7, 1937, made application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the newsreels specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof. Accepted, Approved and Countersigned at New York, N. Y.

Date: Sept. 22, 1937.

Loew's Incorporated (L.S.)
By (Illegible)
Vice-President or Sales Manager

Loew's Incorporated (Distributor of Metro-Goldwyn-Mayer Pictures)
By
(This signature is for identification only and is not an acceptance)

Exhibitor: Warner Bros. Circuit Mgt. Corp. (L.S.)
A Corporation
Owner)
) (Strike out one)
Lessee)
By Alex A. Halperin,
General Manager

3214 EXHIBITION CONTRACT (continued)

Warranties, etc. as to Recorded Sound

Fifth: (a) "Recorded sound" as used in this agreement, is deemed to mean the spoken words, music or other sounds recorded upon a positive print of a newsreel or upon a record, disc or other similar devices separate and apart from a positive print, for use in synchronism therewith.

(m) The Exhibitor warrants and agrees First, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs, or other similar devices; and Second, that if copyrighted musical compositions are included in such recorded sound, the Exhibitor shall at the time of the exhibition of each of such newsreels and the reproduction of such recorded sound, have an effective license from the copyright proprietor thereof or from any licensee of such copyright proprietor publicly to perform the said musical compositions.

(c) The Exhibitor agrees to run all of said newsreels on the same size reels as furnished by Distributor.

Clearance and Run

Sixth: During the life of this contract, Distributor agrees not to exhibit or license the exhibition of any such newsreels in conflict with the run, if any, or prior to the expiration of the clearance period, if any, in the Schedule specified, but it is agreed that any violation hereof by Distributor shall not affect the contract except as to the particular newsreel as to which such violation has occurred, and that the damage that may be claimed by Exhibitor shall not exceed the amount of license fee herein provided for such particular newsreel, and further agrees that such claim for damage shall be the sole exclusive remedy of Exhibitor on account of such violation. Unless otherwise provided herein, such clearance period shall be computed from the last date of exhibition of each newsreel as fixed herein. If clearance is granted hereunder against a specified theatre or theatres which clearance shall indicate that it was the intention of Distributor to grant such

clearance against all of the theatres in the immediate neighborhood or vicinity of Exhibitor's theatre, then, unless otherwise provided in the Schedule, such clearance shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

Delivery and Return of Prints

Seventh: Distributor agrees to deliver to Exhibitor during the period of the Schedule provided for a positive print with recorded sound suitable for exhibition of each of such newsreels for exhibition at the said theatre on the date specified or on the dates determined as herein provided. Delivery of such positive prints by Distributor to Exhibitor or to Exhibitor's authorized agent at Distributor's exchange or to a common carrier or to the United States postal authorities for mailing shall be deemed delivery by Distributor to Exhibitor hereunder.

All deliveries other than at Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to Exhibitor or at the place where Exhibitor's theatre is located prints at least one hour before the usual time for the opening of Exhibitor's Theatre.

Exhibitor agrees to return each positive print received by Exhibitor hereunder with the reels and containers furnished therewith, to the exchange of Distributor from which Exhibitor is served or as otherwise directed by Distributor immediately after the last exhibition of such print, in the same condition as when received by Exhibitor, reasonable wear and tear due to the proper use thereof excepted. Exhibitor agrees to pay all costs of transportation of such positive prints from Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to Distributor's prints exchange; or if directed by Distributor, to ship such positive prints elsewhere than to Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by Distributor therefor, to a carrier designated or used by Distributor and proper receipt therefor obtained by Exhibitor, shall constitute the return of such positive print by Exhibitor.

If Exhibitor fails to or delays the return of any positive print to Distributor or fails to forward or delays forward-

ing (as directed by Distributor) any such print to any other exhibitor the Exhibitor agrees to pay Distributor the damage, if any, so caused Distributor and in addition the damage, if any so caused such other exhibitor.

Distributor is hereby given the option of delivering prints directly to Exhibitor from Distributor's exchange or routed to Exhibitor through another exhibitor. In case of any delay in delivery or non-delivery of any prints so "routed" for any cause beyond the control of Distributor, Exhibitor does hereby release and relieve Distributor of all claims for damages or otherwise therefor.

Selection of Playdates

Eighth: Unless otherwise agreed upon or unless specified or otherwise provided for in the Schedule, the exhibition date or dates of said newsreels shall be determined as follows:

1. Subject to prior runs and or clearance granted or hereafter granted by Distributor to other exhibitors and within a reasonable time after a print or prints of any of said newsreels are received at the exchange of Distributor out of which the Exhibitor is served, and provided Exhibitor is not in default hereunder, Distributor shall mail to Exhibitor a notice in writing of the date when each such newsreel will be available for exhibition by Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors within the period commencing upon the available date and ending thirty (30) days thereafter and give to Distributor written notice of the date or dates so selected.

3. Upon the failure of Exhibitor to so select such date or dates Distributor shall designate such date or dates by mailing written notice thereof to Exhibitor.

Loss of and Damage to Prints

Ninth: Exhibitor shall pay to Distributor a sum equal to the cost of replacement at Distributor's exchange for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the

delivery thereof by Distributor and the return thereof by Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer the title to or any interest in any such positive print to Exhibitor or any other party, nor release Exhibitor from liability arising out of any breach of this contract. Exhibitor shall not be liable for the damage or destruction of any positive print provided Exhibitor establishes such damage or destruction occurred while in transit from Exhibitor and delivery thereof was made as hereinabove provided. Exhibitor shall immediately notify Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from Exhibitor by Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed Distributor's exchange that such print was received by Exhibitor in a partially damaged or destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Assignment

Tenth: This agreement shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party, except that Loew's Incorporated shall have the right without consent of the Exhibitor to assign this agreement to any corporation subsidiary to or affiliated with Loew's Incorporated, in case of which assignment the assignee shall be deemed the "Distributor" hereunder. It is agreed that if Distributor consents to an assignment by Exhibitor, such consent shall not relieve Exhibitor of liability hereunder unless Distributor consents in writing to release Exhibitor from such liability.

Exhibition and Advertising

Eleventh: Exhibitor agrees to run newsreels as delivered without alteration, excepting with the written or telegraphic approval of Distributor, subject to requirements of duly authorized public authorities necessitating any change. Exhibitor also agrees to advertise and announce

each newsreel as News Of The Day or under such other designation as directed by distributor.

All advertising accessories used by Exhibitor in connection with the exhibition of said newsreels must be leased from or through the Distributor and must not be sold, leased or given away by Exhibitor.

Exhibitor agrees not to advertise or announce in any manner any of the newsreels prior to nor until after the completion of the exhibition thereof by any other exhibitor having the right to a run thereof prior to the run herein granted to Exhibitor in the same city, town or zone; and it is agreed that upon any violation hereof by Exhibitor Distributor shall have the right (in addition to any and all other rights and remedies) to withhold delivery to Exhibitor of any newsreel as to which such violation occurs.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other exhibition contract with any other exhibitor.

Warranty As To Advertising

Twelfth: The Distributor warrants that the newsreels herein provided for will not contain any advertising matter for which compensation is received by the Distributor.

Taxes

Thirteenth: The Exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and or the exhibition of positive prints of the newsreels and or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay part of any such tax, fee or other like charges, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Default

Fourteenth: In the event of default by Exhibitor in exhibiting or paying for any newsreel in accordance with the provisions hereof, or if Exhibitor shall exhibit or permit the exhibition of any of the newsreels at any time or place other than as herein specified, or if Exhibitor becomes insolvent or is adjudicated a bankrupt or executes an assignment for the benefit of creditors, or if a receiver is appointed for any of the Exhibitor's property, or upon any default by Exhibitor under any other exhibition contract(s) between the parties hereto, or upon failure or refusal of Exhibitor to furnish any box-office statement or give Distributor's representative access to the theatre and/or to Exhibitor's books and records in connection with percentage engagements as provided in any such other exhibition contract, then upon the happening of any one or more of said events, Distributor may at its option (1) terminate this contract and or such other contract(s) or (2) suspend delivery of additional newsreels hereunder and/or motion pictures under any such other contract(s) until such default or defaults shall cease and be remedied. The exercise of any of said remedies shall be in addition to and without prejudice to any right or remedy of Distributor against Exhibitor at law or in equity and or provided for elsewhere in this agreement, by reason of any such breach.

It is agreed that in the event of the failure or refusal of Exhibitor to pay the license fee of any one or more of the newsreels covered by this contract or of any one or more of the motion pictures covered by any other exhibition contract(s) between the parties hereto, Distributor may at its option declare such failure or refusal a breach of the entire contract and or such other contract(s) entitling Distributor to recover from Exhibitor as damages therefor the amount payable as license fees in respect of all newsreels and or motion pictures and theretofore exhibited and or paid for pursuant to the provision of this contract and or such other contract(s).

Prevention of Performance

Fifteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said newsreels for causes beyond their direct control then this license in respect to each such newsreel shall terminate

and revert to the Distributor without liability on the p
of either party, provided reasonable written notice of s
termination and the cause thereof is given.

Waiver

Sixteenth: The waiver by either party of any bre
or default by the party shall not be construed as a wai
of any other or subsequent breach or default by such o
party.

Verbal Promises: Representations

Seventeenth: This Contract Is Complete and No Pr
ises or Representations Have Been Made by Either Pa
to the Other Except As Set Forth Herein.

Arbitration.

Eighteenth: Exhibitor and Distributor respectiv
freely and voluntarily agree that as a condition precede
to the commencement of any action or proceeding in a
court by either of them, to determine, enforce or prot
the legal rights of either hereunder, each shall subm
all claims and controversies arising hereunder for
termination by arbitration as follows (hereby expres
waiving the oath of the arbitrators):

Either the Exhibitor or Distributor shall appoint an
bitrator and give written notice of such appointment to
other party. Within five (5) days after the receipt of s
notice of appointment, the other party shall appoint
second arbitrator and give written notice of such appoi
ment to the other arbitrator and to the other party. T
two arbitrators so selected shall within three (3) busin
days thereafter select a third arbitrator, and the three
arbitrators shall thereupon meet and determine the matt
The hearing of any such controversy shall be in the c
wherein is situated the exchange of Distributor fr
which Exhibitor is served, unless the parties agree
writing that such hearing be had in some other place. T
arbitrators appointed hereunder shall proceed forthw
to hear and determine the matter or matters referred
them for determination and the evidence submitted
them, and may require the parties to appear and produ
such accounts, documents and witnesses as the arbitrato
may require. The arbitrators shall have power to det
mine such dispute or controversy, to make findings

fact in respect thereof, and to direct specific performance of a contract, and or to determine that the same has been breached in whole or in part, and of that damages on such account shall be paid. The decision or award of a majority of the three (3) arbitrators herein provided for shall be final and binding and conclusive upon the parties hereto. No person shall hear or determine any controversy in which he has an interest direct or indirect, and any person having such interest shall be disqualified to act as an arbitrator. If either party fails or refuses to name the arbitrator to be appointed by such party as herein provided, or if any arbitrator so named shall fail or refuse to act, or be unable or unqualified to serve and another arbitrator qualified and then available to act is not then appointed, another arbitrator may be appointed by the other party hereto. If the arbitrators appointed by or for the respective parties shall fail to agree upon such third arbitrator, such third arbitrator may be appointed by the then acting President of the Chamber of Commerce of the State of New York, or if there be none then by the Chief Judge of the Court of Appeals of the State of New York. The parties hereto further agree to abide by and forthwith comply with any decision and or award of the arbitrators or a majority of them, and consent that any decision and or award shall be enforcible in or by any court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force. If either party fails or refuses to submit to arbitration any such claim or controversy, the party may apply to a United States District Court, or to any other court, including a court of a State in which such hearing would otherwise not be had, for an order to proceed to arbitrate, in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct. If Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy (illegible) and comply (illegible) for in this and in each such existing license agreement between the parties hereto and or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all news reels and or motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by Distributor shall not be deemed an approval or rejection of any other application or applications signed by Exhibitor at the same time or any other time.

by the Exhibitor. If Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of the arbitrators in respect thereto within seven (7) days, Exhibitor may at the option of Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to Distributor within seven (7) days after such failure or refusal. Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party of this or any other existing license agreement between the parties. Each of the parties hereto, without notice to the other, may apply to any Court having jurisidiction to make this agreement to arbitrate a rule or order of such Court.

Acceptance of Application

Nineteenth: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by Distributor and notice of acceptance sent to Exhibitor as herein provided. Deposit by Distributor of any check or other consideration given by Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print of any of the newsreels or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by Distributor.

Unless notice of acceptance of this application by Distributor is sent to Exhibitor by mail or telegraph within fifteen (15) days after the date thereof if said theatre of Exhibitor is located east of the Mississippi River, and within thirty (30) days after the date thereof if located west of said River, said application shall be deemed withdrawn and Distributor shall forthwith return any sums paid on account thereof by Exhibitor.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor shall be forwarded to the Exhibitor.

Separate Applications: It is expressly understood and agreed that the approval or rejection of this application

3215 Metro-Goldwyn-Mayer Pictures
Distributed by Loew's Incorporated
Exhibition Contract 1937-38 Productions

Notice to Exhibitor: This is not a Standard form of Contract. It has been formulated individually by Distributor.

Agreement, made in one or more counterparts between Loew's Incorporated, a corporation (hereinafter referred to as "the Distributor"), party of the first part, and the exhibitor, hereinafter named and referred to as the "Exhibitor", operating the theatre or theatres hereinafter designated, party of the second part.

Witnesseth: The parties hereto agree as follows:

First: The Distributor hereby grants to the Exhibitor, and the latter accepts, a license subject to the terms and conditions hereinafter stated and those printed upon the reverse side hereof which are made a part of this contract, to exhibit publicly in synchronism with recorded sound (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first feature motion picture (other than feature Reissues) deliverable hereunder, unless otherwise in the Schedule provided) at said theatre only, each of the Feature and Junior Feature motion pictures designated or provided for in the Schedule, for the number of successive days in the said Schedule provided for Feature and Junior Feature motion pictures, respectively; and also a license subject to said terms and conditions to exhibit at said theatre only the M-G-M Trailers of such feature motion pictures. This license is under the respective copyrights of said motion pictures and under any copyright which may be in force with respect to any matter included in such recorded sound.

If more than one theatre is hereinafter designated no motion picture or Trailer is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

Second: (a) It is agreed that the feature motion pictures, which are to be exhibited by Exhibitor under each of the classifications provided for in the Schedule shall be des-

ignated by the Distributor, And that any motion picture which Distributor does not designate to any of such classification at least fourteen (14) days prior to the date agreed upon or assigned for the commencement of its exhibition shall be exhibited on the terms provided for in the last of such classifications.

(b) It is further agreed that in case any motion picture excluded by Exhibitor under the "Option to Exclude" or "Roadshows" Clause of this agreement shall be or shall have been designated by Distributor to any of such classifications, then such designation shall be deemed automatically rescinded and Distributor may designate a different motion picture in its place for exhibition upon the terms applicable to the motion picture so excluded.

(c) It is further agreed that in the event any playdates confirmed to Exhibitor for any motion picture designated by Distributor to any of such classifications shall be on days of the week other than those provided in the Schedule for pictures of the respective classification, such playdates shall be deemed cancelled and Exhibitor agrees to select other playdates on days of the week herein provided for pictures of the classification to which such picture is designated by the Distributor.

Third: Unless otherwise expressly provided in the Schedule hereof, the license hereby granted shall not be deemed to include the right to exhibit any of the Feature or Junior Feature motion pictures in whole or in part at any so-called midnight performance, viz., at any time between 12:01 A. M. and 6 A. M.

Fourth: It is agreed that if the run herein granted is other than a first run, Distributor always retains the right, without violating any right of Exhibitor hereunder, to exhibit or license for exhibition any or all of said motion pictures as a "continued first run" (i. e., for a run immediately following the conclusion of the initial first run and prior to any run except first run, with admission prices not less than those of the initial first run), and in such case Exhibitor's availability as to any motion pictures so exhibited is postponed accordingly, and any clearance herein provided over the theatre wherein such "continued first run" occurs is then automatically modified to authorize such "continued first run" in such theatre.

Fifth: In case Exhibitor is granted a second and/or subsequent run hereunder Distributor may at its option re-

quire any of the motion pictures to be exhibited by Exhibitor as a prior run, and Exhibitor agrees so to exhibit same.

Sixth: It is agreed that if for any reason less than the full number of Junior Feature motion pictures of any brand hereby contracted for are generally released within the period September 1, 1937, to August 31, 1938, this contract shall be deemed to be only for the actual number of pictures of the respective brands released during said period.

Seventh: The following Schedule and all of the written and printed parts thereof are a part of this license.

Schedule

To be exhibited on below specified days of week

Rider covering contracts for the 1937-38 and 1938-39 seasons is attached hereto and made part hereof.

As to each motion picture licensed hereunder on a participating basis Exhibitor agrees to pay, in addition to the foregoing, a score charge license fee of ..... dollars ($ .....).

Total Number of Feature Motion Pictures Offered	Total Number of Feature Motion Pictures Licensed

Exhibitor during the whole of the licensed exhibition period of each of said feature motion pictures agrees to and shall charge for admission to said theatre the following prices:

Matinee Admission Prices, per person

Orchestra: Children ..... Adults .....
Balcony: Children ..... Adults .....

Evening Admission Prices (Commencing 6 P. M.), per person

Orchestra: Children ..... Adults .....
Balcony: Children ..... Adults .....

Run ..... Clearance .....

Playing Arrangement(s), Features:
Exhibitor agrees to play and or pay for
feature(s) per in order of release if and as available, starting
License fee per Trailer:
dollars ($). Each Trailer to be shipped to Exhibitor days in advance of the first playdates of the motion picture to which it relates; and to be returned by Exhibitor to Distributor's Exchange or as otherwise directed by Distributor not later than such first playdate.

Junior Features

Totle or Brand	Number in Series	Release Numbers
M-G-M Musicals	6	R601 to R60
Crime Doesn't Pay	6	P611 to P61
Servant of the People	1	1.421
Fitzpatrick Traveltalks	12	T651 to T66
M-G-M Miniatures	10	M671 to M68
M-G-M Cartoons	13	W681 to W69
Pete Smith Specialties	15	S701 to S71
Historical Mysteries	10	H721 to H73
Hal Roach-Our Gang Comedies	12	C731 to C74
Robert Benchley	8	F751 to F75
Audioscopick	1	A761

No run, nor any clearance, is granted to Exhibitor with respect to any of said Junior Features, unless specifically provided for in this Schedule of Junior Features.

Playing Arrangement(s), Junior Features:
Exhibitor agrees to play the Junior Features licensed hereunder as available, commencing
and to pay the total license fee of $
in consecutive weekly installments of $ each week starting
and a further payment of $ for the last week. It is further agreed that in the event Exhibitor fails to play in accordance herewith no credit is to be allowed Exhibitor because prints are not available or are in poor condition.

There are also licensed for exhibition hereunder the following Feature and Junior Feature Reissues:

Reissues

Production Numbers	Title	
150	Trader Horn	
202	Hell Divers	
406	Manhattan Melodrama	
537	Naughty Marietta	
C241	The Perfect Day	(2 reels)
C245	Blotto	(apprx. 3 reels)
C413	Beau Hunks	(approx. 4 reels)
C418	County Hospital	(2 reels)

As to each feature reissue licensed hereunder on a participating basis Exhibitor agrees to pay, in addition to the foregoing, a score charge license fee of dollars ($).

(End of Schedule)

Optional Arbitration Clause: Article Twentieth hereof is optional with the parties hereto. If it is desired to make such Article a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Article shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Article Twentieth hereof shall be included as a part of this license.

Exhibitor Warner Bros. Circuit Mgt. Corp.,
A Corporation,
(Signature illegible),
General Manager.

Representative of the Distributor duly authorized to agree to Article Twentieth.

In Witness Whereof Warner Bros. Circuit Mgt. Corp., the Exhibitor, operating the (theatres per attached), located at ..... Street in the ..... has on September 7, 1937, executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Loew's Incorporated (Distributor of Metro-Goldwyn-Mayer Pictures)
By (Signature illegible)
(This signature is for identification only and is not an acceptance)

Exhibitor Warner Bros. Circuit Mgt. Corp.
A Corporation L.S.
By (Signature illegible)
General Manager.

Accepted, Approved and Countersigned at New York, N. Y.
Date Sep 22 1937.
Loew's Incorporated (L.S.)
By (Signature illegible)
Sales Manager.

White—Home Office; Pink—Exhibitor; Yellow—Branch; Green—Exhibitor's Application.

Printed in U. S. A.

Branch	Territory Letter	Exhibitor's Record Card
Chicago		
Contract Register		Contract Number
Amount		
Features	Jr. Features	Trailers

Time and Place of Exhibition

Eighth: The Exhibitor agrees to exhibit under said license said motion pictures with recorded sound, but only at the theatre herein specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not allow any positive print thereof to leave Exhibitor's possession during the period specified for the exhibition thereof by Exhibitor, nor to exhibit or to permit the exhibition of any such positive print at any other time or place. Such license shall be specifically for such exhibition of such motion pictures, and for no other use or purpose.

License Fees; Payments

Ninth: For the license herein granted Exhibitor agrees to pay to Distributor the license fees provided for in the Schedule for feature motion pictures, junior feature motion pictures, and Trailers, respectively. Exhibitor agrees to pay any fixed sums herein provided for at least three (3) days in advance of the date of shipment from the Distributor's exchange or from the last previous exhibitor of the positive prints of the respective motion pictures and Trailers.

Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print and or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor by Exhibitor under this or any other exhibition contract(s) between the parties hereto and Distributor may require such payment of all sums then due by means of a C.O.D. shipment or otherwise.

It is agreed that all payments to Distributor hereunder shall be made at the Exchange of Distributor out of which Exhibitor is served.

Warranties, etc., as to Recorded Sound

Tenth: (a) "Recorded Sound", as used in this agreement, is deemed to mean the spoken words, music or other sounds recorded upon a positive print of a motion picture or upon a record, disc or other similar devices separate and apart from a positive print, for use in synchronism therewith.

(b) Exhibitor warrants and agrees, First, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound, with adequate volume and high quality whether recorded upon the positive print or upon records, discs, or other similar devices; and Second, that if copyrighted musical compositions are included in such recorded sound, Exhibitor shall at the time of the exhibition of each of such motion pictures and the reproduction of such recorded sound, have an effective license from the copyright proprietor thereof or from any license of such copyright proprietor publicly to perform the said musical compositions.

(c) Exhibitor agrees to run all of said motion pictures on the same size reels as furnished by Distributor.

Clearance and Run

Eleventh: During the life of this contract Distributor agrees not to exhibit or license the exhibition of any such motion pictures in conflict with the "run" or prior to the expiration of the clearance period, if any, in the Schedule specified, but it is agreed that any violation hereof by Distributor shall not affect this contract except as to the particular motion picture as to which such violation has occurred, and that the damage that may be claimed by Exhibitor shall not exceed the amount of the license fee herein provided for such particular motion picture, or, if such motion picture has been contracted for on the basis of a guarantee against a percentage, shall not exceed the amount of such guarantee, or if upon a straight percentage basis, shall not exceed the average amount paid by Exhibitor to Distributor for the motion pictures of Distributor theretofore exhibited by Exhibitor hereunder; and further agreed that such claim for damage shall be the sole and exclusive remedy of Exhibitor on account of such violation. Unless otherwise provided herein, such clearance period shall be computed from the last date of exhibition of each motion picture as fixed herein. If clearance is granted hereunder against a specified theatre or theatres indicating that it was the intention of Distributor to grant such clearance against all theatres in the immediate neighborhood or vicinity of Exhibitor's theatre, then, unless otherwise provided in the Schedule, such

clearance, shall be deemed to apply to and include any theatre hereafter opened in such neighborhood or vicinity.

Definition of Gross Receipts

Twelfth: It is agreed that "gross receipts", as such term is used in this agreement, means all sums (exclusive of admission taxes collected) received by Exhibitor for admission to said theatre on the date(s) of exhibition of the respective motion pictures.

Playdates—Special Provisions

Thirteenth: It is agreed that if the number of days of exhibition selected, designated or otherwise agreed upon, and confirmed in writing by Distributor for any motion picture licensed hereunder shall be less than the maximum number of days specified in the Schedule hereof with respect to such motion picture, then regardless of the number of days specified in said Schedule the license hereby granted to Exhibitor as to such motion picture shall be limited to the number of days of exhibition so selected and confirmed, unless Exhibitor prior to the last playdate so confirmed by Distributor shall secure Distributor's consent in writing to exhibit such motion picture an additional day or days up to the maximum number of days specified in said Schedule. It is further understood and agreed that the license hereby granted shall not be deemed to include (a) any right of exhibition of any motion picture licensed hereunder at any time other than on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitors for such picture; nor (b) any right of exhibition of any motion picture licensed hereunder other than by means of the print of the picture furnished to Exhibitor by Distributor for the express purpose of exhibition on the date or dates of Exhibition so selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such picture.

Admission Prices

Fourteenth: It is agreed that a main consideration for the grant of this license is that Exhibitor warrants and agrees that during the entire engagement of each of the feature motion pictures hereby licensed not less than the respective prices set forth in the Schedule shall be charged for admission to said theatre; and it is agreed that if without prior written consent of Distributor any of such respective admission prices are reduced during the engagement of any of the motion pictures Distributor shall have the right forthwith either to change or modify the run, availability and/or clearance herein provided for, or to terminate this contract as to all feature motion pictures not theretofore exhibited hereunder, together with the right at Distributor's option to terminate any other exhibition contract(s) between the parties hereto.

It is further agreed that if any of the feature motion pictures licensed hereunder are licensed upon a "participating basis"—that is, if the rental thereof is to be determined in whole or in part upon a percentage of the receipts of said theatre or any part thereof—that Exhibitor shall account to Distributor upon the basis of the respective admission prices set forth in the Schedule for each person admitted to the theatre, except for a customary and reasonable number of free admissions to bona fide representatives of the press and or in consideration of theatre advertising, at each performance of each of said motion pictures, (provided that if at any such performance any of the prices of admission are greater than the respective amounts set forth in the Schedule Exhibitor shall account to Distributor on the basis of such larger amounts); and further agreed that if during the engagement of any of the feature motion pictures licensed hereunder any of the respective admission prices set forth in the Schedule are reduced without prior written consent of Distributor, or upon failure or refusal of Exhibitor to account to Distributor upon the basis herein provided with respect to any one or more of the feature motion pictures licensed hereunder on a "participating basis", Distributor shall have the right to terminate this contract as to all feature motion pictures not theretofore exhibited hereunder, together with the right at Distributor's option to terminate any other exhibition contract(s) between the parties hereto and Distributor may thereupon

declare such violation hereof by Exhibitor a breach of this entire contract and or any or all such other contracts entitling Distributor to recover from Exhibitor as damages therefor the amount payable as license fees in respect of all motion pictures not theretofore exhibited and or paid for pursuant to the provisions of this contract and or such other contract(s). It is understood and agreed that such rights shall be in addition to any and all other rights and remedies granted Distributor in this agreement and without prejudice to any and all other rights and remedies at law or equity.

Delivery and Return of Prints

Fifteenth: Distributor agrees to deliver to Exhibitor during the period provided for in Article First hereof a positive print with recorded sound suitable for exhibition of each of such motion pictures for exhibition at the said theatre on the date(s) specified or determined as herein provided. Delivery of such positive prints by Distributor to Exhibitor or to Exhibitor's authorized agent at Distributor's exchange or to a common carrier or to the United States postal authorities for mailing shall be deemed delivery by Distributor to Exhibitor hereunder.

All deliveries other than at Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to Exhibitor or at the place where Exhibitor's theatre is located prints at least one hour before the usual time for the opening of Exhibitor's Theatre.

Exhibitor agrees to return each positive print received by Exhibitor hereunder with the reels and containers furnished therewith, to the exchange of Distributor from which Exhibitor is served or as otherwise directed by Distributor immediately after the last exhibition of such print, in the same condition as when received, reasonable wear and tear due to the proper use thereof excepted. Exhibitor agrees to pay all costs of transportation of such positive prints from Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to Distributor's exchange; or if directed by Distributor, to ship such prints elsewhere than to Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by Distributor

therefor, to a carrier designated or used by Distributor and proper receipt therefor obtained by Exhibitor, shall constitute the return of such positive print by Exhibitor.

If Exhibitor fails to or delays the return of any positive print to Distributor or fails to forward or delays forwarding (as directed by Distributor) any such print to any other exhibitor the Exhibitor agrees to pay Distributor the damage, if any, so caused Distributor and in addition the damage, if any, so caused such other exhibitor.

Distributor is hereby given the option of delivering prints directly from Distributor's exchange or routed to Exhibitor through another exhibitor. In case of any delay in or nondelivery of any prints so "routed" for any cause beyond Distributor's control, Exhibitor hereby releases Distributor of all claims for damages or otherwise.

Selection of Playdates

Sixteenth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of Distributor out of which Exhibitor is served, and provided Exhibitor is not in default hereunder, Distributor shall mail to Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of Exhibitor to so select such date or dates Distributor shall designate such date or dates by mailing written notice thereof to Exhibitor.

Loss of and Damage to Prints

Seventeenth: Exhibitor shall pay to Distributor a sum equal to the cost of replacement at Distributor's exchange for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by Distributor and the return thereof by Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to Exhibitor or any other party, nor release Exhibitor from liability arising out of any breach of this contract. Distributor shall at the option of Exhibitor repay or credit to Exhibitor any sums paid by the latter for lost or stolen prints excepting "news reels," upon their return to Distributor within thirty (30) days after the date when the same should have been returned hereunder. Exhibitor shall not be liable for the damage or destruction of any positive print, provided Exhibitor establishes such damage or destruction occurred while in transit from Exhibitor and delivery thereof was made as hereinabove provided. Exhibitor shall immediately notify Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from Exhibitor by Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed Distributor's exchange that such print was received by Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Reissues: Advertising Matter

Eighteenth: Distributor warrants that none of the motion pictures licensed hereunder are reissues from old negatives or old negatives renamed, except those specifically set forth as such in the Schedule; and further that none of said motion pictures will contain any advertising matter for which compensation is received by Distributor.

Assignment

Nineteenth: This agreement shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party, except that Loew's Incorporated shall have the right without consent of the Exhibitor to assign this agreement to any corporation subsidiary to or affiliated with Loew's Incorporated, in case of which assignment the assignee shall be deemed the "Distributor" hereunder. It is agreed that if Distributor consents to an assignment by Exhibitor, such consent shall not relieve Exhibitor of liability hereunder unless Distributor consents in writing to release Exhibitor from such liability.

Arbitration

Twentieth: Exhibitor and Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration as follows (hereby expressly waiving the oath of the arbitrators):

Either the Exhibitor or Distributor shall appoint an arbitrator and give written notice of such appointment to the other party. Within five (5) days after the receipt of such notice of appointment, the other party shall appoint a second arbitrator and give written notice of such appointment to the other arbitrator and to the other party. The two arbitrators so selected shall within three (3) business days thereafter select a third arbitrator, and the three (3) arbitrators shall thereupon meet and determine the matter. The hearing of any such controversy shall be in the city wherein is situated the exchange of Distributor from which Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. The arbitrators appointed hereunder shall proceed forthwith to hear and determine the matter or matters referred to them for determination and the evidence submitted to them, and may require the parties to appear and produce such accounts, documents and witnesses as the arbitrators may require. The arbitrators shall have power to determine such dispute or controversy, to make findings of fact in respect thereof, and to direct specific performance of a contract, and/or to

determine that the same has been breached in whole or in part, and/or that damages on such account shall be paid. The decision or award of a majority of the three (3) arbitrators herein provided for shall be final and binding and conclusive upon the parties hereto. No person shall hear or determine any controversy in which he has an interest direct or indirect, and any person having such interest shall be disqualified to act as an arbitrator. If either party fails or refuses to name the arbitrator to be appointed by such party as herein provided, or if any arbitrator so named shall fail or refuse to act, or be unable or unqualified to serve and another arbitrator qualified and then available to act is not then appointed, another arbitrator may be appointed by the other party hereto. If the arbitrators appointed by or for the respective parties shall fail to agree upon such third arbitrator, such third arbitrator may be appointed by the then acting President of the Chamber of Commerce of the State of New York, or if there be none then by the Chief Judge of the Court of Appeals of the State of New York. The parties hereto further agree to abide by and forthwith comply with any decision and or award of the arbitrators or a majority of them; and consent that any such decision and or award shall be enforcible in or by any court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force. If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a State in which such hearing would otherwise not be had, for an order to proceed to arbitrate, in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct. If Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and/or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor. If Distributor shall fail or refuse to submit to

arbitration any such claim or controversy or to abide by and comply with the decision or the award of the arbitrators in respect thereto within seven (7) days, Exhibitor may at the option of Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to Distributor within seven (7) days after such failure or refusal. Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party of this or any other existing license agreement between the parties. Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

Exhibition and Advertising

Twenty-First: Exhibitor agrees to run motion pictures (excepting "news reels"), as delivered without alteration, excepting with the written or telegraphic approval of Distributor, subject to requirements of duly authorized public authorities necessiting any change. Exhibitor also agrees to advertise and announce each motion picture as a "Metro-Goldwyn-Mayer picture." In all newspaper advertising and publicity issued by Exhibitor relating to said motion pictures Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by Distributor. All advertising accessories used by Exhibitor in connection with the exhibition of said motion pictures must be leased from or through the Distributor and must not be sold, leased or given away by Exhibitor.

Exhibitor agrees not to advertise or announce in any manner any of said motion pictures prior to nor until after the completion of exhibition thereof by any other exhibitor having the right to a run thereof prior to that herein granted Exhibitor in the same city, town or zone. The Exhibitor shall not advertise or announce in any manner any feature motion picture which may be roadshown by the Distributor and not excepted and excluded from this license until Distributor shall have notified Exhibitor that such motion picture is available for exhibition by Exhibitor, and then only as provided in this Article. Upon any violation hereof by Exhibitor, Distributor shall have the right (in addition to any and all other rights and remedies) to with-

hold delivery to Exhibitor of any motion picture as to which such violation occurs. Distributor shall not in any wise be liable for any breach of the provisions of this paragraph of Article Twenty-first contained in any other exhibition contract with any other exhibitor.

Taxes

Twenty-Second: Exhibitor agrees to pay to Distributor upon demand any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and/or the exhibition of positive prints of the motion pictures and or upon the sums payable under this contract by the Exhibitor to Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by Distributor and the exact amount payable hereunder by Exhibitor is not therein definitely fixed or cannot be exactly determined then Exhibitor agree to pay part of any such tax, fee or other like charge, paid or payable by Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Default

Twenty-Third: In the event of default by Exhibitor in exhibiting or paying for any motion picture in accordance with the provisions hereof, or in furnishing any box-office statement or in giving Distributor's representative access to the theatre and or to Exhibitor's books and records in connection with percentage engagements as herein provided, or if Exhibitor shall exhibit or permit the exhibition of any of the motion pictures at any time or place other than as herein specified, or if Exhibitor becomes insolvent or is adjudicated a bankrupt or executes an assignment for the benefit of creditors, or if a received is appointed for any of Exhibitor's property, or upon any default by Exhibitor under any other Exhibition contract(s) between the parties hereto or upon failure or refusal of Exhibitor to furnish any box office statement or give Distributor's representative access to the theatre and or to Exhibitor's books and records in connection with percentage engagements as provided in any such other exhibition contract, then upon the happening of any one or more of said events, Distributor may at its option (1) terminate this contract and or such other contract(s) or (2) suspend the delivery of addi-

tional motion pictures hereunder and or under any such other contract(s) until such default or defaults shall cease and be remedied. The exercise of any of said remedies shall be in addition to and without prejudice to any right or remedy of Distributor against Exhibitor at law or in equity and or provided for elsewhere in this agreement, by reason of any such breach.

It is agreed that in the event of the failure or refusal of Exhibitor to pay the license fee of any one or more of the motion pictures covered by this contract or any other exhibition contract(s) between the parties hereto, Distributor may at its option declare such failure or refusal a breach of this entire contract and or such other contract(s) entitling Distributor to recover from Exhibitor as damages therefor the amount payable as license fees in respect of all motion pictures not theretofore exhibited and or paid for pursuant to the provisions of this contract and or such other contract(s).

Prevention of Performance

Twenty-Fourth: (a) If the Exhibitor shall be prevented from exhibiting any of the motion pictures licensed hereunder for any cause beyond direct control of Exhibitor, then this license in respect to each such motion picture shall terminate and revert to Distributor without liability on the part of Exhibitor provided written notice of such termination and the cause thereof is given to Distributor within a reasonable time after the occurence of the cause of such prevention of performance.

(b) If for any cause beyond Distributor's direct control, or by reason of delays in production, Distributor shall be delayed in delivering any of the motion pictures licensed hereunder, or shall be prevented from generally releasing within the period of one (1) year commencing September 1, 1937, the minimum number of motion pictures provided for in the Schedule hereof, then the failure of performance by Distributor in such respect shall be excused, and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by Exhibitor.

Waiver

Twenty-Fifth: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Verbal Promises: Representations

Twenty-Sixth: This Contract Is Complete And No Promises Or Representations Have Been Made By Either Party To The Other Except As Set Forth Herein.

Percentage Bookings

Twenty-Seventh: If this contract calls for payment or any part thereof computed upon the Exhibitor's receipts, such payment or any part thereof shall be made daily, together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of each motion picture for which payment is so required to be made; and Exhibitor shall also furnish immediately after the conclusion of the engagement of each such motion picture a recapitulating statement and together therewith pay to Distributor any amount due in connection with such engagement. All such statements shall show the number of admissions at the respective admission prices charged at each performance, and the number of free admissions, and shall be signed by Exhibitor's cashier and countersigned by Exhibitor or the manager of the theatre. Should Distributor so require, such itemized statements shall be made upon forms furnished by Distributor. At all times upon such date or dates Distributor is hereby given the right to have its authorized representatives at said theatre to check the sale of tickets of admission to and persons entering the theatre and all receipts therefrom. Exhibitor agrees that such representatives shall for such purpose have free access to all parts of the theatre and theatre premises, including the boxoffice, and the right to examine any and all ticket machines and or devices and all tickets and stubs; and shall also have the right to examine all entries in all of Exhibitor's books and records pertaining to gross receipts of each such motion picture at said theatre. Distributor is also hereby given the right to audit all of Exhibitor's books

and records at any time after the conclusion of the engagement of any such motion picture, and for such purpose Distributor by its authorized representatives shall be given access to the theatre, including the box-office, and/or other place or places where such books and records are kept. It is expressly understood and agreed that Exhibitor's books and records shall show, among other items, the number of admissions and gross receipts at each separate performance during the engagement of any such motion picture, matinee, evening and any other performances; and further agreed that if Exhibitor's operating expense is an element in the computation of the amount payable to Distributor hereunder the right herein granted Distributor to audit Exhibitor's books and records shall include the right to examine all of such books and records relating to Exhibitor's operating expenses. It is further agreed that in computing Exhibitor's operating expenses any and all income (such as amounts payable to Exhibitor from renting and/or sub-renting space in the building where the Exhibitor's theatre is located and/or for screen advertising of any kind on the screen in the theatre; etc.) during the period of the engagement of any motion picture on a participating basis shall be deducted from Exhibitor's operating expenses.

It is further agreed that all sums of money accruing to Distributor hereunder as its share of any engagement of a motion picture on a participating basis shall be held by Exhibitor in trust for Distributor.

The Distributor agrees that any information obtained by it pursuant to the provisions of this Article will be treated as confidential, except in any arbitration proceedings or litigation in respect of this contract.

Liquidated Damages, Percentage Bookings

If the license fee of any motion picture licensed hereunder is to be computed either in whole or in part upon a percentage of the admission receipts of said theatre, and if Exhibitor fails or refuses to exhibit such motion picture as provided in this contract, Exhibitor shall pay to Distributor as liquidated damages for each day that Exhibitor fails or refuses to exhibit such motion picture (in addition to any fixed sums payable hereunder in respect of such motion picture) a sum equal to such percentage of the average daily gross receipts of such theatre during the exhibition thereat of all feature motion pictures distributed by Dis-

tributor exhibited by Exhibitor on a "participating basis" during the period of ninety (90) days prior to the date or dates when such motion picture should have been so exhibited or prior to the date of such failure or refusal to exhibit any of said motion pictures; or, in the event no feature motion picture distributed by Distributor was exhibited thereat on a "participating basis" during said period, then Exhibitor shall pay as liquidated damages for each day Exhibitor fails or refuses to exhibit such motion picture (in addition to any fixed sums payable hereunder in respect of such motion picture) a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such motion picture should have been so exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided, however, that if Exhibitor shall exhibit such motion picture for less than the full number of days provided for in this contract, such sum equal to such percentage shall be computed upon a sum equal to seventy-five per cent (75%) of the gross receipts of said theatre for the last day of the exhibition thereat of such motion picture.

Option to Exclude if Group Licensed

Twenty-Eighth: If the total number of feature motion pictures (other than Reissues) offered to Exhibitor by Distributor at one time shall have been licensed by Distributor hereunder, Exhibitor shall have the right to exclude from this agreement not to exceed ten per cent (10%) of the total number of feature motion pictures (other than Reissues) licensed hereunder, provided Exhibitor shall not be in default under this agreement insofar as it relates to feature motion pictures. Such privilege of exclusion may be exercised only if Exhibitor shall give to Distributor written notice of Exhibitor's election to exclude any of such pictures not later than fourteen (14) days prior to the date of availability to Exhibitor of the respective picture. In computing the number of motion pictures which may be excluded hereunder fractions of one-half or more shall be regarded as one. Upon the exclusion of each feature motion picture the license therefor and all rights with respect thereto shall terminate and revert to Distributor.

General Release

Twenty-Ninth: A motion picture shall be deemed generally released (as such term is used in the Schedule herein and elsewhere) when publicly exhibited under license by Distributor (excepting any roadshow, tryout, preview or pre-release exhibition thereof) at any motion picture theatre in the United States for three (3) consecutive days, at prices usually charged for admission to such theatre, and the first day of such exhibition shall then be deemed to be the date of general release. Pre-release exhibition shall be deemed to be any exhibition because of seasonal conditions making desirable exhibition in advance of general release as herein defined. A feature motion picture of which the date of general release in the United States by Distributor occurs during the period commencing September 1, 1937, and ending August 31, 1938, even though produced and or roadshown prior to September 1, 1937, shall be considered as one of Distributor's 1937-38 feature productions, as such term is used in the Schedule herein.

Road Shows

Thirtieth: The terms "roadshow" and "roadshowing" (as used in the Schedule herein and elsewhere) means the exhibition of a feature motion picture at theatres at which admission prices for evening performances, during such exhibitions thereof, are not less than One Dollar ($1.00) for the majority of the orchestra seats.

Any feature motion pictures (including those licensed hereunder) may be roadshown at such theatres and at such times and for such periods as Distributor may elect, provided that not more than four (4) of the feature motion pictures licensed hereunder shall be roadshown in the territory served by Distributor's Exchange(s) serving the Exhibitor's theatre except that in the case of roadshowings in New York City and or in Los Angeles there shall be no such limitation. No feature motion picture licensed hereunder, and roadshown, shall in any event be deemed available for exhibition hereunder (unless expressly made available by the Distributor at an earlier date) prior to the completion of its roadshowing, but the foregoing shall not be deemed to include among the feature motion pictures licensed hereunder any whose date of general release in the United States occurs after August 31, 1938.

nor to affect Distributor's right to except and exclude next below given. If and when such roadshow exhibition shall be in the territory served by the Distributor's Exchange(s) serving the Exhibitor's theatre, Distributor shall have the right to except and exclude from this license not to exceed four (4) of the feature motion pictures as roadshown upon sending to the Exhibitor written notice to such effect not later than fourteen (14) days after the completion of such roadshow exhibition in such territory, provided Distributor shall by like notice except and exclude such feature motion picture from all other contracts containing this clause licensing the exhibition of such feature motion pictures in such territory. Such exception and exclusion herefrom shall not be affected in case Distributor shall inadvertently omit to send such notice to any of such other exhibitors.

For each feature motion picture licensed hereunder that Distributor shall except and exclude, as aforesaid, Exhibitor is hereby granted the option to except and exclude from this license one of the other feature motion pictures licensed hereunder, but only if Exhibitor shall give to Distributor written notice to that effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other feature motion picture. Distributor may exhibit and or license the exhibition of any and all feature motion pictures excepted and excluded from this license by Distributor and or Exhibitor, as aforesaid, when and where desired by Distributor, free from all claims of Exhibitor in respect thereof.

Wherever the term feature motion picture(s) is used in this Article, such shall not be deemed to refer to or include any of the feature reissues licensed hereunder.

Acceptance of Application

Thirty-First: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by Distributor and notice of acceptance sent to Exhibitor as herein provided. Deposit by Distributor of any check or other consideration given by Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print or sound records by any of the motion pictures of the furnishing

of any advertising accessories shall not be deemed an acceptance hereof by Distributor. Unless notice of acceptance of this application by Distributor is sent to Exhibitor by mail or telegraph within fifteen (15) days after the date thereof if said theatre of Exhibitor is located east of the Mississippi River, and within thirty (30) days after the date thereof if located west of said River, said application shall be deemed withdrawn and Distributor shall forthwith return any sums paid on account thereof by Exhibitor. A copy of this application, signed by Exhibitor shall be left with Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by Distributor shall be forwarded to Exhibitor.

Separate Applications: It is expressly understood and agreed that the approval or rejection of this application by Distributor shall not be deemed an approval or rejection of any other application or applications signed by Exhibitor at the same time or at any other time.

3217 PLAINTIFFS' EXHIBIT 155.

(Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

1936-1937 Season

Paramount:

Loop—6 at percentage
" 31 at flat rental

Outlying—Tivoli 23 flat rental
Uptown and Marbro 20 flat rental
Southtown 22 flat rental
Granada and Harding 16 flat rental
Riviera 12 flat rental
Varsity 16 flat rental
"B", "C", and subsequent run houses at flat rental

Metro:

Loop—27 at percentage
18 at flat rental

Outlying—All product played during this season in the "A", "B", "C", and subsequent run houses at flat rental, subject to franchise on additional film rental.

Fox:

Loop—14 at percentage
16 at flat rental

Outlying—All product played during this season in the "A", "B", "C", and subsequent run houses at flat rental.

Warners:

Loop—13 at percentage
19 at flat rental

Outlying—**Product not available to Tivoli, Southtown and Regal.** All product played during this season in the "A", "B", "C", and subsequent run houses at flat rental.

RKO:

Loop—Not available

Outlying—**Not available to Tivoli, Southtown, Regal, and Central Park. All product played** during this season in the "A", "B", "C" and subsequent run houses at flat rental.

3218 1937-38 Season

Paramount:

Loop—10 at percentage
21 at flat rental

Outlying—All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental.

Metro:

Loop—26 at percentage
12 at flat rental

Outlying—All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental subject to participation according to franchise. Tivoil Theatre, Downers Grove, Ill. played 32 at percentage and 12 at flat rental. Alba Theatre played 4 at percentage and 18 at flat rental. Iris Theatre played 4 at percentage and 39 flat rental. Valencia Theatre 4 at percentage and 39 flat rental.

Fox:

Loop—14 at percentage
11 at flat rental

Outlying—All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental.

Warners:

Loop—13 at percentage
18 at flat rental

Outlying—Product not available to Tivoli, Southtown and Regal. All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental.

RKO:

Loop—1 at precentage repeat on the Palace Theatre.
1 at flat rental.

Outlying—Not available to Tivoli, Southtown, Regal and Central Park. All product played during this season in the "A", "B", "C", and subsequent run houses at flat rental.

3219 1938-39 Season

Paramount:

Loop—6 at percentage
28 at flat rental

Outlying—All product played during this season in the "A", "B", "C", and subsequent run houses at flat rental.

Metro:

Loop—26 at percentage
11 at flat rental

Outlying—All product played during this season in the "A", "B", "C", and subsequent run houses at flat rental subject to participation according to franchise. Tivoli Theatre, Downers Grove, Ill., played 4 at percentage and 41 flat rental. Valencia Theatre, Evanston, Ill., 4 at percentage and 44 flat rental. Coronet, Evanston, Ill., 4 at percentage and 44 flat rental. Iris 4 at percentage and 44 flat rental. Luna 4 at percentage and 40 flat rental.

Fox:

Loop—15 at percentage
16 at flat rental

Outlying—All product played during this season in the "A", "B", "C", and subsequent run houses at flat rental.

Warners:

Loop—13 at percentage
19 at flat rental

Outlying—Product not available to Tivoli, Southtown and Regal. All product played during this season in the "A", "B", "C", and subsequent run houses at flat rental.

RKO:

Loop—2 at percentage repeat on the Palace Theatre.
1 at flat rental.

Outlying—Product not available to Tivoli, Southtown, Regal and Central Park. All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental.

3220 1939-40 Season

Paramount:

Loop— 8 at percentage
24 at flat rental

Outlying—All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental.

Metro:

Loop—27 at percentage.
15 at flat rental.

Outlying—All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental subject to participation according to franchise. Tivoli, Downers Grove, Ill., played 4 at percentage and 39 flat rental. Valencia, Evanston, Ill., 4 at percentage and 42 flat rental. Coronet, Evanston, Ill., 4 at percentage

and 44 flat rental. Iris 4 at percentage and 41 flat rental. Luna 4 at percentage and 40 flat rental. Park, LaGrange, Ill., 4 at percentage and 37 flat rental.

Fox:

Loop—13 at percentage
8 at flat rental

Outlying—All product played during this season in the "A", "B", "C", and subsequent run houses at flat rental.

Warners:

Loop—15 at percentage
15 at flat rental

Outlying—Product not available to Tivoli, Southtown, and Regal. All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental, except 8 pictures which played at a guarantee and participation.

RKO:

Loop—2 at percentage repeat on Palace
2 at flat rental repeat on Palace

Outlying—All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental.

3221 1941-42 Season

Paramount:

Loop—26 at percentage
8 at flat rental

Outlying—All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental.

Metro:

Loop—17 at percentage
24 at flat rental

Outlying— 4 at percentage in all outlying theatres.
22 at flat rental in the Tivoli and Southtown.
14 at flat rental in the Uptown, Marbro, Granada, and Harding.

16 at flat rental in the Varsity.
18 at flat rental in the Riviera.
35 at flat rental in the Belmont and Tower.
34 at flat rental in the Gateway, Norshore, Pantheon and Paradise.
14 at flat rental in the Century.
32 at flat rental in the Congress.
33 at flat rental in the Nortown.
25 at flat rental in the Regal.
36 at flat rental in the "C" theatres.
38 at flat rental in the subsequent run houses.

Fox:

Loop—16 at percentage
18 at flat rental

Outlying—2 at percentage in all outlying theatres.
19 at flat rental in the Tivoli and Southtown.
17 at flat rental in the Uptown, Marbro, Granada, Harding and Varsity, Evanston, Ill.
12 at flat rental in the Riviera.
17 at flat rental in the Century.
19 at flat rental in the Regal.
27 at flat rental in the Belmont, Congress, Norshore, and Nortown.
28 at flat rental in the Gateway, Pantheon and Tower.
29 at flat rental in the Paradise.
28 at flat rental in the "C" theatres.
35 at flat rental in the subsequent run houses.

3222 Warners:

Loop—11 at percentage
12 at flat rental

Outlying—Product not available to Tivoli, Southtown and Regal.
7 at percentage in all outlying theatres.
8 at flat rental in the Uptown, Marbro, Granada and Harding.
6 at flat rental in the Varsity Theatre, Evanston, Ill.

4 at flat rental in the Riviera.
14 at flat rental in the Belmont, Congress and Nortown.
12 at flat rental in the Century, Norshore, Pantheon and Paradise.
16 at flat rental in the Tower.
18 at flat rental in the "C" theatres.
21 at the flat rental in the subsequent run houses.

RKO:

Loop— 1 at percentage

Outlying—Not available in the Tivoli, Southtown, Regal and Central Park with the exception of Samuel Goldwyn Productions. All product played during this season in the "A", "B", "C" and subsequent run houses at flat rental.

3223

PLAINTIFF'S EXHIBIT 156-A

LIST OF THEATERS APPEARING ON PLAINTIFFS' THEATRE MAP SHOWING SEATING CAPACITY AND PLAYING POSITION OF EACH THEATRE

Theatre	Address	Seating Capacity as Appears in License Department	Playing Position
Acadia	2739 West 55th St	671	2nd week
Ace	6219 South Halsted	922	2nd week
Ada (Closed)			
Alma	5352 Wentworth Avenue	286	3rd week
Amo	436 East 61st	655	2nd week
Annetta	2337 S. 52nd, Cicero	1050	3rd week
Apollo	526 East 47th St	635	2nd week
Archer	2006 W. 35th St	944	1st week
Ark	858 East 63rd St (Listed on map as Midway)	611	2nd week
Atlantic	3948 West 26th St	2086	"C" week
Avalon	1645 East 79th St	2385	"A" week
Avenue (closed)	3108 S. Indiana Avenue	950	7th week
Berwyn	6404 W. 22nd St. Berwyn	1685	"C" week
Beverly	1543 West 95th St	1242	"C" week
Boulevard	1606 West Garfield	98	1st week
Bridgeport (closed)			
Brighton	4223 South Archer	1467	1st week
Broadway Strand	1641 W. Roosevelt Road	1498	"C" week
Burnside	9304 South Cottage Grove	291	3rd week
Butler	518 W. 26th St (Now listed as Norwal)	208	4th week
California	3434 W. 26th St		
Capitol	7941 S. Halsted St	709	1st week
		2409	"A" or "B" week
3224			
Central Park	3535 W. Roosevelt Road	1747	"C" week
Charm	4703 S. Halsted	208	3rd week
Chatham (closed)			
Chelton	7945 S. Exchange Ave	978	2nd week
Circle	3231 W. Roosevelt Road.	609	2nd week
Colony	3208 W. 59th St	1661	"C" week
Commercial	9150 S. Commercial	1466	"C" week
Coral	95th and Cicero (Not listed on map)	1000	
Cornell Square	1932 W. 51st St	207	2nd week
Cosmopolitan	7938 S. Halsted (Now known as Cosmo)	1222	1st week
Crane	4236 Archer Avenue	207	1st week
Crown-Hipp (closed)	4013 W. 26th St.	750	1st week
Crystal	4921 S. Ashland Avenue	208	3rd week
Dolton	360 Chicago Avenue, Dolton, Ill (Not listed on map)	300	
Douglas	3236 W. Cermak Road	792	2nd week
Eagle	3324 S. Morgan	327	3rd week
E. A. R.	6839 S. Wentworth	892	2nd week
East Side	10555 S. Ewing	923	1st week
Edwards (Rita)			3rd week

PLAINTIFF'S EXHIBIT 156-A

Theatre	Address	Seating Capacity as Appears in License Department	Playing Position
Emmett	4338 S. Wentworth	560	2nd week
Empress	6228 S. Halsted	1205	2nd week
Englewood	726 W. 63rd	1320	1st week
3225			
Frolic	951 E. 55th St	903	1st week
Gaelic	2425 W. 47th St	298	2nd week
Gage Park	2622 W. 51st St		4th week
Gaiety	9205 S. Commercial	823	2nd week
Gold	3411 W. Roosevelt Road	782	2nd week
Grand	3110 S. State	853	7th week
Grand	13114 S. Western	804	
	(Not listed on map)		
Grove	7620 S. Cottage Grove	1856	"C" week
Groveland (closed)			7th week
Grant	Cicero, Illinois	300	2nd week
Halfield	5451 S. Halsted	954	1st week
Halsted	6108 S. Halsted	650	7th week
	(Listed on map as Little Halsted)		
Hamilton	2150 E. 71st St	999	2nd week
Harmony	411 E. 42rd St	500	7th week
Harper	5236 S. Harper	1154	1st week
Harvard	6312 S. Harvard	698	1st week
Hawthorne	Cicero, Ill		4th week
Highland	7859 S. Ashland	2079	"C" week
Highway	6329 S. Western	1009	1st week
Hillside	1515 W. 69th St	299	3rd week
Homan	3346 W. 26th St	342	1st week
Home (closed)	3749 W. 26th St	296	3rd week
Hyde Park	5310 S. Lake Park	688	2nd week
Illington	2118 W. Cermak	982	1st week
Independence	3725 W. Roosevelt Road	600	3rd week
	(Now known as Road)		
3236			
Indiana	219 W. 43rd St	688	2nd week
International	9223 S. Commercial	292	7th week
	(Now known as Joy)		
Irving	1310 S. Halsted	297	3rd week
Jackson Park	6711½ Stony Island	1420	1st week
Jeffery	1952 E. 71st St	1804	"C" week
Joy	1617 W. Roosevelt Road	796	
	(Not listed on map)		
Ken	1225 E. 47th St	906	2nd week
	(Listed on map as Kenwood)		
Kimbark	6240 S. Kimbark	688	2nd week
Langley	706 E. 63rd	864	3rd week
Lawn	3419 W. 63rd	299	4th week
Lawndale	4015 W. Roosevelt Road	2000	2nd week
Lexington	1162 E. 63rd St	732	1st week
	(Now known as Lex)		
Linden	743 W. 63rd St	788	1st week
Lindy	3437 W. Ogden Avenue	664	2nd week
Loomis	2858 S. Archer Avenue	294	3rd week
Lyceum (closed)			
Lynn	1044 W. 63rd St	299	3rd week
Lyric	3950 W. Cermak Road	298	3rd week

PLAINTIFF'S EXHIBIT 156-A

Theatre	Address	Seating Capacity as Appears in License Department	Playing Position
Marlowe (closed)			
Marquette	3157 W. 63rd St	1040	1st week
Marshall Square	2871 W. Cermak Road	1426	"C" week
Maryland	855 E. 63rd	1499	"C" week
3227			
Mayfair	5722 W. 63rd St	360	2nd week
Metropole	238 W. 31st	297	3rd week
Metropolitan	4644 S. South Parkway	1364	1st week
Michigan	110 E. Garfield Blvd	1469	1st week
Midway	6250 S. Cottage Grove	877	2nd week
Midwest	3538 S. Archer	1813	"C" week
Milda	3140 S. Halsted	943	2nd week
Mily	1821 Loomis St.	959	"C" week
Model (closed)			
Morton Park	Cicero, Ill	300	7th week
New Lyric	3950 W. Cermak	298	3rd week
New Regent	6826 S. Halsted	805	2nd week
Normal	456 W. 119th St (Not listed on map)	770	
N. R. A	5744 S. Prairie	838	3rd week
Oakland Square	3947 S. Drexel (Listed on map as Oakland)	1424	1st week
Oakwyn	6817 W. Roosevelt, Berwyn (Listed on map as Oak)	490	2nd week
Ogden	1619 W. 63rd St (Listed on map as West Englewood)	2093	"C" week
Ogden	2758 West Ogden Avenue	496	4th week
Olympia	4619 S. Ashland	615	2nd week
Orpheus (Joy)			2nd week
Owl	4653 S. State	943	2nd week
Palace	1828 S. Halsted	959	2nd week
(Halsted)			
Palace	5242 W. 25th St., Cicero		1st week
3228			
Park	3955 S. Parkway	886	2nd week
Park Manor	321 E. 69th	321	3rd week
Parkway	11053 S. Michigan	752	2nd week
Pastime (closed)			
Peoples	1620 W. 47th St	2065	"C" week
Piccadilly	1443 East Hyde Park Blvd	2865	"B" week
Pickford (closed)			
Pix	828 E. 47th St	800	3rd week
Public	4712 S. Prairie	872	3rd week
Pulaski	1525 S. Pulaski	300	3rd week
Ramova	3518 S. Halsted	1246	1st week
Ray	2638 E. 75th St	598	7th week
Regal	4719 S. South Parkway	2797	"B" week
Rex	6348 S. Racine	604	2nd week
Rhosies	544 E. 79th	1430	"C" week
Ridge	646 W. 25th St	734	
Ritz	6348 Roosevelt, Berwyn	2000	1st week
Roseland	11331 S. Michigan	907	1st week
Rosette (closed)			
Roxy	3245 Grove, Berwyn	825	1st week
Shakespeare	940 E. 43rd St	958	2nd week

PLAINTIFF'S EXHIBIT 156-A

Theatre	Address	Seating Capacity as Appears in License Department	Playing Position
Shore	2507 E. 75th St.	1496	1st week
Southtown	610 W. 63rd St.	3202	"A" week
Southway (closed)			
Stadium (closed)	1803 Blue Island Ave.		7th week
3229			
Stanley (closed)			
State	11020 S. Michigan	1961	"C" week
States	3507 S. State	686	2nd week
Stratford	715 W. 63rd St.	2465	"B" week
Sunnyside	7219 Wentworth	500	3rd week
Thalia	1807 S. Albert	870	1st week
Tivoli	6325 S. Cottage Grove	3474	"A" week
Tower	1520 E. 63rd St.	2995	"B" week
20th Century	3538 W. Roosevelt Road	700	1st week
Town	5935½ W. Roosevelt, Cicero	730	2nd week
Vendome (closed)			
Verdi	303 E. Kensington	386	3rd week
Villas	5603 Cermak, Cicero	1000	1st week
Virginia	210 E. 43rd St.	274	3rd week
Vista (Pix)	828 E. 47th St.	800	3rd week
Wabash (closed)	1838 S. Wabash		1st week
Wallace	622 W. 31st St.	297	3rd week
Western (closed)			
White Palace	1609 S. Kedzie Ave.	727	1st week
Willard	340 E. 51st St.	923	3rd week
Woodlawn	1326 E. 63rd St.	595	3rd week

3230

PLAINTIFFS' EXHIBIT 173

LOOP GROSS RECEIPTS

1937 Through 1942

Chicago		Garrick	
1942	$2,144,086.42	1942	328,223.55
1941	1,885,959.04	1941	257,627.19
1940	1,878,284.59	1940	246,976.58
1939	1,709,562.37	1939	217,702.29
1938	1,693,571.60	1938	255,729.92
1937	1,694,633.58	1937	257,389.70
State-Lake		Apollo	
1942	868,875.19	1942	389,933.05
1941	881,963.50	1941	169,174.53
1940	706,146.45	1940	280,525.74
1939	650,720.60	1939	315,622.43
1938	13,689.85	1938	294,139.60
	Unwork	1937	321,931.80
1937			
Roosevelt			
1942	660,780.83		
1941	527,138.05		
1940	516,445.23		
1939	426,156.88		
1938	403,361.05		
1937	588,280.36		
United Artists			
1942	721,192.61		
1941	613,142.43		
1940	654,105.77		
1939	598,703.75		
1938	680,658.71		
1937	783,858.10		

3231

WARNER EXHIBIT 12

THEATRES	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	
AVALON	A	A	A	A	A	A	S. F.	A	A	A	A	A	A	A	
1645 E. 79th St.)	S. F.	S. F.	D. F. 7/17/32	Closed 6/12 Opened 8/23 S. F.	S. F.	S. F.	D. F. 12/25/36	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	F May 1930
BEVERLY						C	C	C	C	C	C	C	C	C	
1543 W. 95th St.						S. F.	S. F.	S. F.	S. F.	S. F.	S. F.	S. F.	S. F.	S. F.	L. 6/3/35
BUCKINGHAM	C	C	C												L. 11/15/30
3319 No. Clark St.	S. F.	D. F.	D. F.												D. 12/31/32
CAPITOL	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
7941 So. Halsted	S. F.	S. F.	S. F.	S. F.	S. F.	S. F.	S. F.	D. F. 1/1/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	F May 1930
COSMOPOLITAN	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	
7936 So. Halsted	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 2/2/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	L. May 1930
FROLIC	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	
951 E. 55th St.	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 1/24/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	L. 11/15/30
GROVE	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
7320 Cottage Grove	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 1/17/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	L. May 1930
HAMILTON	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	1st	1st	2nd	
2150 E. 71st St.	S. F.	D. F.	D. F.	S. F. 10/2/33 Closed 8/1	S. F.	S. F.	S. F.	D. F. 1/31/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	L. 11/15/30
HARVARD	1st	1st	1st	Opened 10/2											L. 11/15/30
63rd & Harvard				1st											D. 12/18/33
	S. F.	D. F.	D. F.	S. F. 10/2/33											
HIGHLAND	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
7859 So. Ashland	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 1/31/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	L. May 1930
	C	C	C	C	C	C	C	C	C	C	C	C	C	C	L. May 1930
JEFFREY								D. F. 8/29/37							
1952 E. 71st St.								S. F. 4/18/37							
	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 1/17/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	F July 1934
JULIAN	1st	1st	1st												L. 11/15/30
918 W. Belmont	S. F.	D. F.	D. F.												D. 12/31/32
LEXINGTON	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st					L. 11/15/30
1162 E. 63rd St.	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 1/17/37	D. F.	D. F.					L. E. 9/15/39
					C or	C or	C or	C or	C or	C or	C or	C or	C or	C or	
METROPOLITAN	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	L. L. 15/30
4644 So. Parkway	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	D. F. 12/6/36	D. F. 12/6/	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	
OAKLAND SQUARE	C	C	C	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	
3947 Drexel Blvd.	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 1/17/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	L. 11/15/36
ORPHEUM	A & B	A & B	A & B	A & B	A & B	A & B	A & B	A & B							L. 11/1/25
110 So. State St.	S. F.	D. F. 9/4/31	S. F. 9/32	S. F.	S. F.	S. F.	S. F. 9/36	S. F.							L. L. 4/29/37
OWL	2nd	2nd													L. 11/15/30
47th & State St.	S. F.	D. F.													D. 3/31
RHODES								C	C	C	C	C	C	C	L. 11/1/37
538 E. 79th St.								S. F. 11/19/37	D. F. 1/12/38	D. F.	D. F.	D. F.	D. F.	D. F.	F. 8/1/42
SHAKESPEARE	2nd	2nd	2nd	2nd											L. 11/15/30
940 E. 43rd St.	S. F.	D. F.	D. F.	S. F. 10/2/33											D. 2/4/33
SHORE	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	
2507 E. 75th St.	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 1/24/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	F June 1930
STRATFORD	B	B	B	B	B	B	B	B	B	B	B	B	B	B	
715 W. 63rd St.	S. F.	S. F. 12/7/31 D. F. 9/20/31	D. F. 3/20/32	S. F.	S. F.	S. F.	S. F.	D. F. 1/20/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	F May 1930
SYMPHONY	1st or 2nd	1st or 2nd	1st or 2nd	1st or 2nd	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	
4937 N. Chicago	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 1/3/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	L. 8/1/30
WEST ENGLEWOOD															
or OGDEN	C	C	C	C	C	C	C	C	C	C	C	C	C	C	L. May 1930
1619 W. 63rd St.	S. F.	D. F.	D. F.	S. F. 10/2/33	S. F.	S. F.	S. F.	D. F. 1/17/37	D. F.	D. F.	D. F.	D. F.	D. F.	D. F.	F June 1936

L. LEASE
L. E. LEASE EXPIRED
F. OWNED IN FEE
D. DISCONTINUED OPERATION
D. F. DOUBLE FEATURE
S. F. SINGLE FEATURE

WARNER EXHIBIT 13

ADMISSION PRICES—(Excluding Federal Taxes)

C—Children
A—Adults

Effective Period Avalon, Chicago	Matinee						Evening					
	Weekdays		Saturday		Sunday		Weekdays		Saturday		Sunday	
	C	A	C	A	C	A	C	A	C	A	C	A
5/19/30 to 12/ 6/30	~~10~~	30	10	30	25	60	15	50	25	60	25	60
12/ 7/30 to 3/ 4/32	10	30	10	30	15–25	40	15	50	25	60	25	60
3/ 5/32 to 6/24/32	10	30	10	30	15	40	15	50	15	60	15	60
6/25/32 to 11/19/32	10	30	10	30	15	40-5	15	50	15	50	15	50
11/20/32 to 12/29/32	10	30	10	30	10–15	35-50	15	40	15	50	15	50
12/30/32 to 1/13/33	10	25	10	25	10	30-45	10	40	10	45	10	45
1/14/33 to 4/27/33	10	25	10	25	10	30-40	10	40	10	40	10	40
4/28/33 to 5/25/33	10	30	10	30	10	40-45	10	45	10	45	10	45
5/26/33 to 6/11/33	10	25	10	25	10	30-40	10	40	10	40	10	40
6/12/33 to 8/24/33			Closed						Closed			
8/25/33 to 3/ 3/34	10	30	10	30	10	40-45	10	45	10	45	10	45
3/ 4/34 to 6/ 5/34	10	30	10	30	10	30-45	10	45	10	45	10	45
6/ 6/34 to 11/ 3/34	10	25	10	25	10	30-40	10	40	10	40	10	40
11/ 4/34 to 12/28/34	10	25	10	25	10	40	10	40	10	40	10	40
12/29/34 to 2/22/35(a)	10	30	10	30	10	50	10	45	10	50	10	50
2/23/35 to 4/27/35	10	25	10	30	10	40-45	10	40	10	45	10	45
4/28/35 to 5/11/35	10	30	10	30	10	45	10	45	10	45	10	45
5/12/35 to 5/24/35	10	25	10	30	10	40-45	10	40	10	45	10	45
5/25/35 to 10/25/35	10	25	10	25	10	40	10	40	10	40	10	40
10/26/35 to 11/ 8/35	10	30	10	30	10	45	10	45	10	45	10	45
11/ 9/35 to 12/27/35	10	25	10	25	10	40	10	40	10	40	10	40
12/28/35 to 8/ 6/36(a)	10	25	10	25	10	40-45	10	40	10	45	10	45
8/ 7/36 to 12/24/36(b)	10	30	10	30	10	45	10	45	10	45	10	45
12/25/36 to 8/31/38(c)	10	30	10	30	10	50	10	45	10	50	10	50

NOTE: (a) New Year's Eve M. & E. 12/31/34 @ 50¢—12/31/35 @ 54¢.
(b) These prices also in effect on special pictures prior to 8/7/36.
(c) New Year's Eve M. & E. 12/31/36 @ 80¢ and 12/31/37 @ $1.00.
(e) No 10¢ admissions sold from 9/2/37 to 9/25/37 on orders from City Health Dept.

2965

Warner Exhibit No. 13

Grove, Chicago												
5/19/30 to 12/ 6/30	10	25	10	25	15	40	15	35	15	40	15	40
12/ 7/30 to 4/25/31	10	25	10	25	10-15	25-40	15	35	15	40	15	40
4/26/31 to 10/24/31	10	25	10	25	10-15	40	15	35	15	40	15	40
10/25/31 to 5/21/32	10	25	10	25	10-15	25-40	15	35	15	40	15	40
5/22/32 to 12/22/32	10	20	10	20	10	25-40	10	35	10	40	10	40
12/23/32 to 6/29/34	10	20	10	20	10	25-35	10	30	10	35	10	30
6/30/34 to 11/ 3/34	10	20	10	20	10	25-35	10	30	10	30	10	30
11/ 4/34 to 7/31/36	10	20	10	20	10	30-35	10	30	10	30	10	30
8/ 1/36 to 1/17/37	10	20	10	20	10	30-35	10	30	10	35	10	30
1/18/37 to 8/31/38*	10	25	10	25	10	30-35	10	35	10	35	10	30

*NOTE: 1. No 10¢ admissions sold from 9/2/37 to 9/25/37 on orders from City Health Dept.
2. During engagement of "Snow White" 6/8/38 to 6/12/38—all childrens admissions 15¢.
3. Dish Giveaways on Thursdays effective 1/13/38; Thursday giveaway discontinued after 6/16/38.
4. Dish Giveaways on Tuesdays effective 3/8/38.
5. Dish Giveaways on Wednesdays effective 6/15/38.
6. On all dish giveaway days—ladies paid the evening price of 35¢ at the matinee if they received a dish.

Jeffery, Chicago												
5/19/30 to 12/ 6/30	10	25	10	25	15	40	15	35	15	40	15	40
12/ 7/30 to 5/ 2/31	10	25	10	25	10-15	25-40	15	35	15	40	15	40
5/ 3/31 to 8/ 6/32	10	25	10	25	15	40	15	35	15	40	15	40
8/ 7/32 to 10/ 1/32	10	25	10	25	10-15	25-40	15	35	15	40	15	40
10/ 2/32 to 12/22/32	10	25	10	25	10	25-40	10	35	10	40	10	40
12/23/32 to 11/ 3/34	10	20	10	20	10	25-35	10	30	10	35	10	35
11/ 4/34 to 2/ 2/37	10	20	10	20	10	30-35	10	30	10	35	10	35
2/ 3/37 to 8/31/38*	10	25	10	25	10	30-35	10	35	10	35	10	35

*NOTE: 1. New Year's Eve M. S. 12/31/37 @ 15¢ and 40¢.
2. During engagement of "Snow White" 6/5/38 to 6/8/38—childrens admissions were 15¢.
3. No 10¢ admissions sold from 9/2/37 to 9/25/37 on orders from City Health Dept.

Shore, Chicago												
6/28/30 to 11/ 9/30	Closed		10	25	15	40	15	25	15	40	15	40
11/10/30 to 11/23/30	Closed		10	25	10-15	25-40	10-15	25-35	15	40	15	40
11/24/30 to 2/ 1/31	Closed		10	25	10-15	25-40	15	35	15	40	15	40
2/ 2/31 to 5/ 1/32	Closed		10	25	10-15	25-40	10-15	25-35	15	40	15	40
5/ 2/32 to 10/ 7/32	10	15	10	15	10	25-35	10	25	10	35	10	35
10/ 8/32 to 12/23/32	10	15	10	20	10	25-35	10	25	10	35	10	35
12/24/32 to 11/ 3/34	10	15	10	15	10	20-30	10	25	10	25	10	30
11/ 4/34 to 1/23/37(a)	10	15	10	15	10	25-30	10	25	10	25	10	30
1/24/37 to 8/31/38(b)	10	20	10	20	10	30-35	10	30	10	30	10	35

NOTE: (a) Bank Nite on Thursdays effective 6/20/35—Matinee admissions 10-15-25¢.
(b) Bank Nite on Tuesdays also effective 5/12/36—Matinee admissions 10-15-25¢.
(a) Both Bank Nites were eliminated after December, 1936.
(b) Glassware giveaways on Wednesdays and Thursdays effective 8/24 and 8/25/38—matinee admissions 10-20-30¢.
(b) No 10¢ admissions sold from 9/2/37 to 9/25/37 on orders from City Health Dept.

Warner Exhibit No. 13.

29030

PLAINTIFF'S EXHIBIT

ADMISSION PRICES—Federal Tax Excluded

C—Children
A—Adult

Date		Matinee						Evening					
		Weekdays		Saturday		Sunday (Early Bird)		Weekdays		Saturday		Sunday—All Day (Early Bird Excepted)	
From	To	C	A	C	A	C	A	C	A	C	A	C	A
Avalon													
8/26/38	8/24/39	10	30	10	30			10	45	10	50	10	50
8/25/39	11/10/39	10	30	10	30			10	45	10	50	10	50
11/11/39	8/29/40	10	30	10	30			10	45	15	50	15	50
8/30/40	8/28/41	10	30	10	30			10	45	15	50	15	50
8/29/41	1/ 1/42	10	30	10	30			10	45	15	50	15	50
1/ 2/42	8/27/42	10	31	15	31			10	50	15	50	15	50
8/28/42	6/25/43	10	31	15	31			10	50	15	50	15	50
6/26/43	Date	10	31	18	31			18	50	18	50	18	50
Jeffery													
8/28/38	8/26/39	10	25	10	25	10	30	10	35	10	35	10	35
8/27/39	8/31/40	10	25	10	25	10	30	10	35	10	35	10	35
9/ 1/40	8/30/41	10	25	10	25	10	30	10	35	10	35	10	35
8/31/41	12/20/41	10	25	10	25	10	30	10	35	10	35	10	35
12/21/41	8/29/42	10	27	10	27	10	31	10	36	10	36	10	36
8/30/42	2/13/43	10	27	10	27	10	31	10	36	10	36	10	36
2/14/43	Date	10	27	10	27			10	36	10	36	10	36
Grove													
8/28/38	8/26/39	10	25	10	25	10	30	10	35	10	35	10	35
8/27/39	8/31/40	10	25	10	25	10	30	10	35	10	35	10	35
9/ 1/40	8/30/41	10	25	10	25	10	30	10	35	10	35	10	35
8/31/41	12/20/41	10	25	10	25	10	30	10	35	10	35	10	35
12/21/41	8/29/42	10	27	10	27	10	31	10	36	10	36	10	36
8/30/42	2/13/43	10	27	10	27	10	31	10	36	10	36	10	36
2/14/43	Date	10	27	10	27			10	36	10	36	10	36
Shore													
8/28/38	10/ 1/38	10	20	10	20			10	30	10	30	10	35
10/ 2/38	8/26/39	10	20	10	20	10	25	10	30	10	30	10	35
8/27/39	4/ 6/40	10	20	10	20	10	25	10	30	10	30	10	35
4/ 6/40	8/31/40	10	20	10	20	10	15	10	30	10	30	10	30
9/ 1/40	2/ 1/41	10	20	10	20	10	15	10	30	10	30	10	30
2/ 2/41	8/30/41	10	20	10	20			10	30	10	30	10	30
8/31/41	8/29/42	10	20	10	20			10	30	10	30	10	30
8/30/42	5/15/43	10	20	10	20			10	30	10	30	10	30
5/16/43	Date	10	22	10	22			10	31	10	31	10	31

2070

Warner Exhibit No. 13.

3234 PLAINTIFF'S EXHIBIT 00 File 6145

PERCENTAGE OF INCREASE OR DECREASE IN BOX OFFICE RECEIPTS BY YEARS

Year	Jackson Park	Avalon	Joe	Hamilton	Shore	Lexington
1931	$ 93,568.10	$454,889.98	$209,190.27	$ 47,211.85	$120,536.79	—
1932		364,602.04 19.8-	157,378.72 24.7	42,331.39 10.3	93,005.90 28.2	**$47,319.44
1933	95,120.40 1.6	*187,420.89 48.8	146,239.32 7.6	43,816.30 3.5	102,817.83 10.5	70,364.00 48.6
1934	98,166.85 3.1	246,770.84 31.7-	167,714.65 14.6	53,118.25 21.2	126,105.46 22.7	76,474.55 8.7
1935	106,479.30 8.5	270,577.56 9.6	177,093.14 4.5	60,962.70 14.7	135,719.95 7.5	81,550.30 6.7
1936	123,067.45 15.6	319,898.66 18.2	211,349.86 16.2	63,247.45 3.7	145,415.12 7.7	92,922.85 13.9
1937	102,382.15 16.8	344,176.89 7.0	191,839.24 9.2	70,228.55 11.0	133,063.17 9.3	87,655.85 5.7
1938	92,934.83 9.2	336,272.83 2.2	164,280.70 16.7	61,770.25 12.0	105,497.86 26.1	69,049.21 21.2
1939	88,490.81 4.8	352,575.90 4.6	156,574.80 4.7	57,320.70 7.8	100,120.36 5.4	49,293.20 28.6
1940	83,772.77 5.3	342,484.23 2.9	157,146.75 1.0	62,870.43 9.7	92,726.58 7.4	Disposed of
1941	89,778.40 7.2	361,610.12 5.4	154,915.56 1.4	70,997.01 11.4	96,148.54 4.3	
1942	*95,394.39 5.9	381,881.28 5.6	154,180.06 1.0	68,497.38 3.5	103,265.32 6.7	
1943		401,151.26 5.0	157,376.84 2.1	65,702.74 3.9	107,228.05 3.7	

*Avalon closed 2½ months of summer.
**Lexington partial year only.

PERCENTAGE OF INCREASE OR DECREASE IN BOX OFFICE RECEIPTS BY YEARS

Year	Grove	Highland	Cosmo	Capitol
1931	$218,012.38	$219,443.12	$108,838.09	$500,425.55
1932	158,936.98 27.1	163,536.76 25.5	68,808.08 36.8	442,777.64 11.5
1933	136,457.56 14.1	142,795.40 14.5	70,138.55 1.9	249,500.50 43.6
1934	150,998.06 10.6	151,944.53 6.4	80,064.84 12.4	286,636.89 14.8
1935	154,794.93 2.5	162,111.03 6.7	94,694.53 15.4	306,910.02 7.0
1936	176,296.09 13.8	168,891.86 4.0	111,742.10 18.0	312,340.61 1.8
1937	175,941.57 1.0	173,707.46 2.8	108,484.55 2.9	332,154.81 6.3
1938	129,567.48 35.7	156,602.02 9.8	99,518.76 8.3	313,953.91 5.5
1939	120,048.82 7.3	155,929.72 1.0	96,105.61 3.4	319,264.66 1.7
1940	124,739.43 3.8	161,611.24 3.6	97,320.24 1.3	323,785.77 1.4
1941	128,764.35 3.2	165,165.89 2.2	102,655.37 5.5	341,156.32 5.4
1942	126,938.15 1.4	157,942.32 4.4	95,154.04 7.3	358,447.46 5.0
1943	123,553.60 2.7	158,678.07 1.0	95,705.72 .1.0	376,928.49 5.2

3236 EXHIBIT 17 File 6145

SCHEDULE OF ATTENDANCE FROM 1936 TO 1943 INCLUSIVE

Year	Avalon	Jeffery	Hamilton	Shore	Grove	Highland	Cosmo	Capital
1936	970,779	817,644	289,452	696,217	766,622	717,684	577,193	1,008,782
1937	950,573 2.1	709,130 13.1	326,005 12.6	585,124 15.9	702,073 8.4	697,443 2.8	519,079 10.1	974,882 3.3
1938	937,989 1.3	584,346 21.3	374,782 15.7	427,609 26.9	488,244 30.4	594,950 14.6	436,652 15.8	892,899 8.4
1939	1,000,115 7.6	564,745 3.3	254,811 7.3	417,428 2.4	449,892 7.9	588,849 1.0	426,372 2.4	951,157 6.5
1940	951,643 5.7	555,669 1.6	265,332 4.0	403,476 3.3	466,681 3.7	602,098 2.2	437,961 2.6	921,809 3.8
1941	965,960 1.5	547,344 1.5	282,573 6.5	432,163 7.1	475,985 2.0	601,289 1.0	461,328 5.4	921,221 1.0
1942	986,362 2.1	536,428 2.0	274,592 2.8	443,190 2.6	461,344 3.1	575,071 4.4	419,596 9.9	949,739 3.1
1943	1,028,884 4.3	539,691 1.0	265,228 3.4	445,777 1.0	455,672 1.2	573,163 1.0	421,852 1.0	985,066 3.7

WARNER EXHIBIT 18

JEFFERY THEATRE

Comparison of Box Office Receipts on Bank Night and Other Games Nights for Calander Year 1936 with same Nights of Week in 1937, also Comparison of Weekly Receipts in 1936 with 1937

1936 Date	We		Bank Night and other Game Receipts	Weekly Receipts	1937 Date	We		Bank Night and other Game Receipts	Weekly Receipts
1/3	1/4	(1)	$ 817.30	$ 4,682.85	12/30	1/2	(1)	$ 417.36	$ 4,838.05
1/8-10	1/11	(2)	1,121.50	3,658.90	1/6-8	1/9	(2)	884.90	2,874.15
1/15	1/18	(1)	651.10	4,029.36	1/13	1/16	(1)	368.20	3,936.20
1/22-24	1/25	(2)	800.80	3,152.60	1/20-22	1/23	(2)	958.22	4,160.33
1/29-31	2/1	(2)	1,477.30	4,006.80	1/27-29	1/30	(2)	784.00	3,032.90
2/5-7	2/8	(2)	1,535.90	4,024.15	2/3-2/5	2/6	(2)	1,068.40	3,526.65
2/7-9	2/15	(2)	1,080.10	3,193.70	2/10-2/12	2/13	(2)	794.55	4,247.11
2/19-21	2/22	(2)	1,226.75	3,518.75	2/17-19	2/20	(2)	845.65	3,262.85
2/26-28	2/29	(2)	1,229.50	4,512.15	2/24-26	2/27	(2)	658.05	3,736.70
3/4-6	3/7	(2)	1,321.30	3,567.35	3/3-5	3/6	(2)	889.95	4,124.85
3/11-13	3/14	(2)	1,723.85	4,493.25	3/10-12	3/13	(2)	633.60	2,920.40
3/18-20	3/21	(2)	1,924.60	4,982.25	3/17-19	3/20	(2)	973.40	4,142.85
3/25-27	3/28	(2)	2,255.45	5,026.45	3/24-26	3/27	(2)	749.35	3,490.80
4/1-3	4/4	(2)	1,821.20	4,529.10	3/31-4/2	4/3	(2)	811.10	4,142.60
4/8-10	4/11	(2)	1,150.80	3,661.00	4/7-9	4/10	(2)	753.60	3,296.15
4/15-17	4/18	(2)	1,276.85	3,768.10	4/14-16	4/17	(2)	773.55	3,427.15
4/22-24	4/25	(2)	1,231.45	4,811.38	4/21-23	4/24	(2)	685.30	2,945.60
4/29-5/1	5/2	(2)	1,471.40	4,351.40	4/28-30	5/1	(2)	664.85	3,311.70
5/6-5/8	5/9	(2)	1,299.80	3,752.10	5/5-7	5/8	(2)	636.75	2,983.65
5/13-5/15	5/16	(2)	1,514.25	3,920.69	5/12-14	5/15	(2)	800.90	3,125.25
5/20-5/22	5/23	(2)	1,684.45	4,359.60	5/19-21	5/22	(2)	780.90	2,976.15
5/27-5/29	5/30	(2)	1,613.25	4,533.55	5/26-28	5/29	(2)	735.90	3,038.30
3238									
6/3-5	6/6	(2)	1,588.65	4,396.30	6/2-4	6/5	(2)	643.00	2,710.90
6/10-12	6/13	(2)	1,638.15	4,632.85	6/9-11	6/12	(2)	852.55	3,139.35
6/17-19	6/20	(2)	1,104.90	3,858.45	6/16-18	6/19	(2)	768.90	3,492.95
6/24-26	6/27	(2)	1,498.95	4,981.45	6/23-25	6/26	(2)	642.10	2,475.50
6/30-7/1-7/3-7/4		(3)	2,280.80	4,651.25	6/29-30-7/2	7/3	(3)	1,228.40	2,697.25
7/8-10	7/11	(2)	1,974.75	5,280.50	7/7-9	7/10	(2)	895.30	3,527.95
7/15-17	7/18	(2)	1,816.80	4,453.75	7/14-16	7/17	(2)	1,041.75	3,240.20
7/22-24	7/25	(2)	1,984.30	4,619.20	7/21-23	7/24	(2)	813.90	3,049.05
7/29-31	8/1	(2)	1,216.75	4,229.70	7/28-30	7/31	(2)	951.45	3,401.50
8/5-7	8/8	(2)	1,731.05	4,244.75	8/4-6	8/7	(2)	992.25	4,293.10

3240 B. & K., PARAMOUNT EXHIBIT 1.

(Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

(Letterhead of Allied Theatres of Illinois, Inc., Chicago Ill.)

July 6, 1942.

Mr. J. J. Donohue
Paramount Pictures Corporation
1306 South Michigan Avenue
Chicago, Illinois

Dear Mr. Donohue:

Thise is to advise you that effective with the August, 1942, releases we shall expect you to put the Hamilton Theatre back to their playing position of second week of Chicago General Release.

Mr. Alex Halperin has been advised of this move.

Yours very truly,
Jackson Park Theatre,
By R. B. Salkin.

RSB:B
Registered Mail
(Handwriting) Registered #866687
(Stamp) Received Jul 7 1942.

3241 B. & K., PARAMOUNT EXHIBIT 10.

(Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

Gross Receipts—Tivoli

1933	407,683
1934	418,150
1935	422,962
1936	541,180
1937	490,640
1938	426,289
1939	434,822
1940	475,312
1941	475,961
1942	518,805
1943	557,371

Warner Exhibit No. 18.

WARNER EXHIBIT 18

JEFFERY THEATRE

Comparison of Box Office Receipts on Bank Night and Other Games Nights for Calander Year 1936 with same Nights of Week in 1937, also Comparison of Weekly Receipts in 1936 with 1937

1936 Date	We	Bank Night and other Game Receipts	Weekly Receipts	1937 Date	We	Bank Night and other Game Receipts	Weekly Receipts
8/12-14	8/15 (2)	1,733.45	4,591.40	8/11-13	8/14 (2)	704.30	2,825.60
8/19-21	8/22 (2)	1,593.00	4,087.55	8/18-20	8/21 (2)	884.10	3,056.05
8/26-28	8/29 (2)	1,597.00	4,438.85	8/25-27	8/28 (2)	770.00	2,735.40
9/2-4	9/5 (2)	1,469.60	3,893.05	9/1-3	9/4 (2)	743.05	2,893.75
9/9-11	9/12 (2)	1,630.40	4,965.70	9/8-10	9/11 (2)	616.35	2,722.45
9/16-18	9/19 (2)	1,657.90	4,188.55	9/15-17	9/18 (2)	731.94	3,093.49
9/23-25	9/26 (2)	1,323.20	3,524.90	9/22-24	9/25 (2)	521.55	2,564.45
9/30-10/2	10/3 (2)	1,425.70	4,986.15	9/29-30	10/2 (2)	750.90	3,655.45
10/7-10/9	10/10 (2)	1,528.85	4,093.20	10/6-8	10/9 (2)	562.35	2,849.50
10/14-10/16	10/17 (2)	1,574.70	4,605.00	10/13-15	10/16 (2)	694.15	3,674.95
10/21-23	10/24 (2)	1,716.15	3,991.15	10/20-22	10/23 (2)	722.70	3,222.30
10/28-30	10/31 (2)	1,686.70	3,783.35	10/27-29	10/30 (2)	632.40	2,546.20
3239						846.45	2,803.40
11/4-11/6	11/7 (2)	1,848.70	4,332.80	11/3-11/5	11/6 (2)	849.00	3,404.95
11/11-11/13	11/14 (2)	1,830.00	5,276.85	11/10-12	11/13 (2)	706.20	2,859.05
11/18-20	11/21 (2)	1,714.45	4,803.85	11/17-19	11/20 (2)		
11/25-27	11/28 (2)	1,589.80	4,921.40	11/24-26	11/27 (2)	1,022.15	4,646.95
12/2-4	12/5	1,589.60	4,069.35	12/1-3	12/4	513.05	3,000.50
12/9-11	12/12	1,753.70	4,258.75	12/8-10	12/11	544.30	3,181.30
12/16-18	12/19	1,612.75	4,223.90	12/15-17	12/18	541.05	2,822.20
12/22-23-25	12/26 (3)	2,294.40	3,754.15	12/21-22-24	12/25	570.90	2,305.55
Total	104	80,234.05	222,673.58	Total Decrease	104	39,375.86 40,858.19	170,413.63 52,259.95

3242 B. & K., PARAMOUNT EXHIBIT 11.

(Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

Tower Theatre

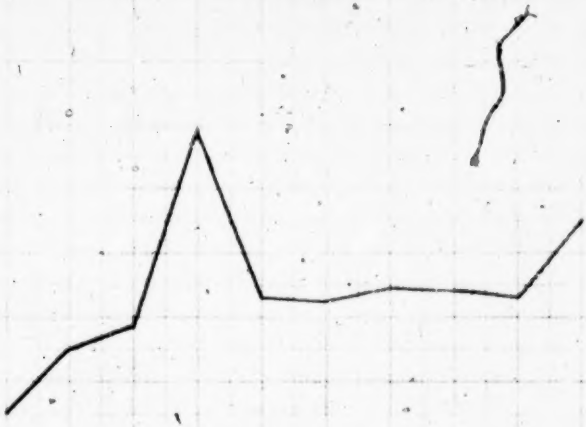
Address—1520 E. 63rd St., Chicago, Ill.

Year	Gross Admission	Film Rental
1933	$170,330.70	$56,959.63
1934	190,676.15	53,408.68
1935	197,249.77	51,570.42
1936	258,482.33	57,015.77
1937	206,910.30	66,431.70
1938	205,556.84	60,919.43
1939	209,850.30	69,580.21
1940	208,363.19	76,362.81
1941	206,799.63	68,619.38
1942	230,787.58	71,328.45

Bank-Par. Ex. 12

1520 E. 63rd St.
Chicago, Illinois

Seating Capacity - 3,000
Playing Position - "B" Week



Admissions



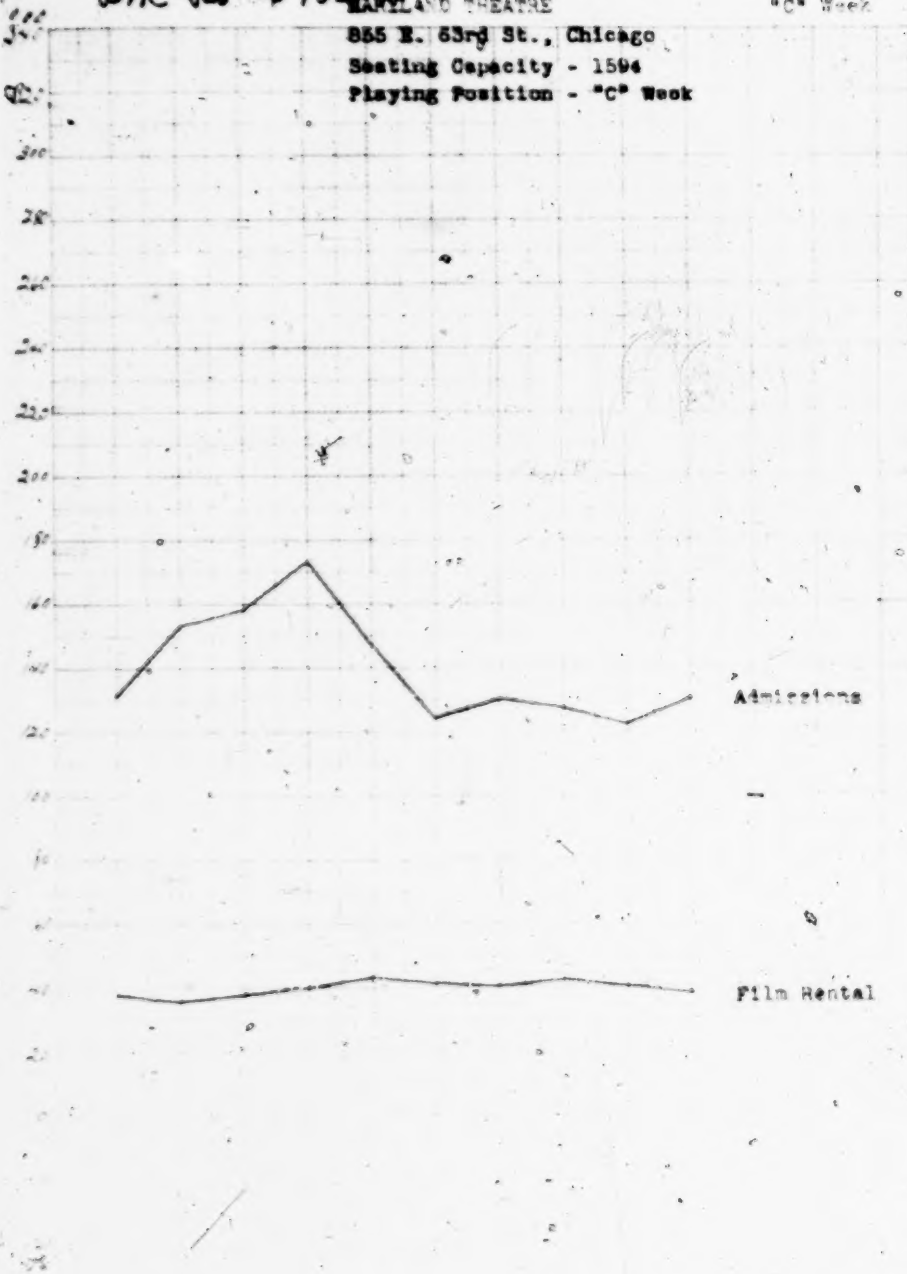
Film Rental

YEARS 1933 34 35 36 37 38 39 40 41 42 43 44 45

BTK-Pa 64 13

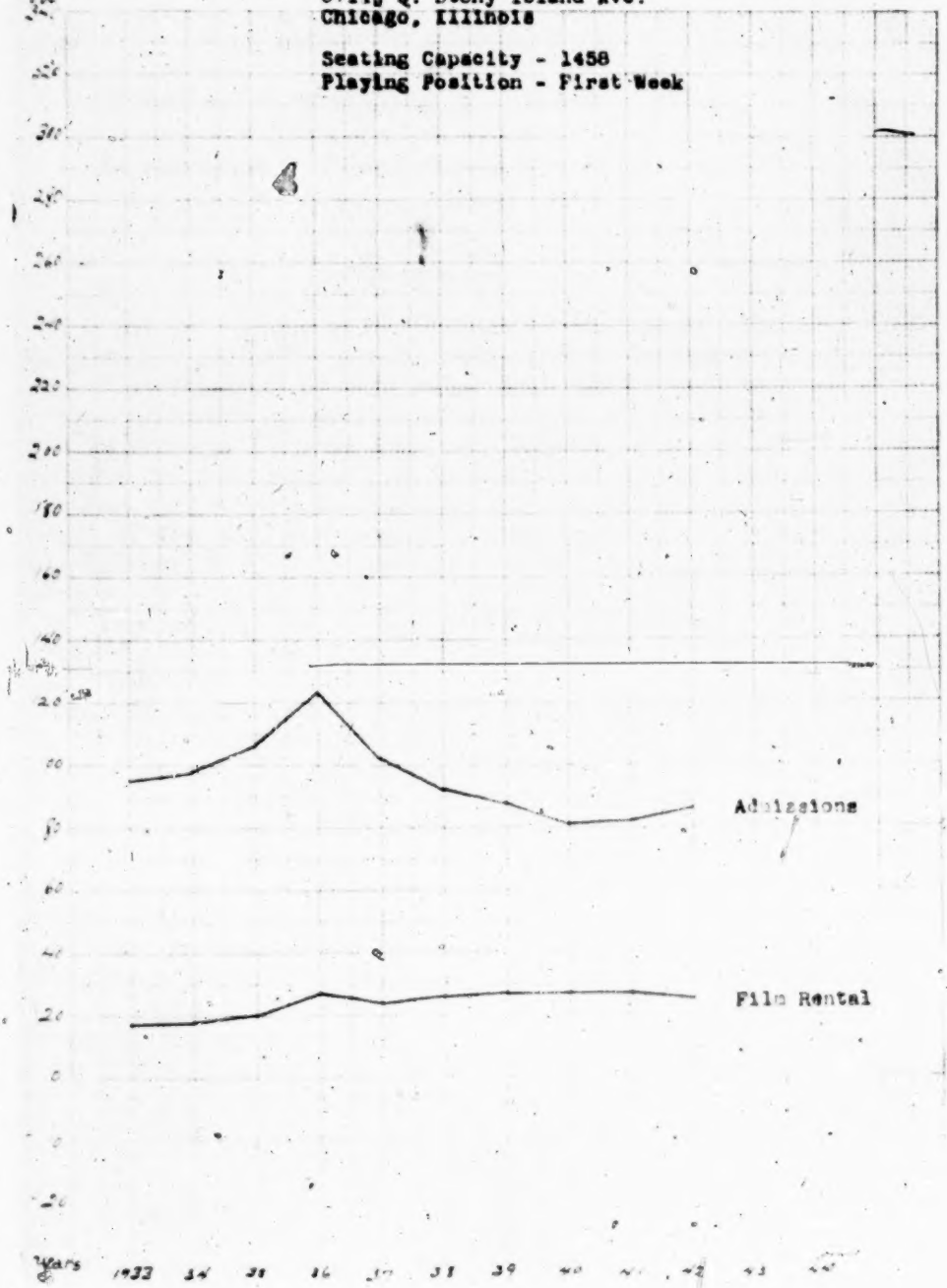
MARYLAND THEATRE "C" Week

855 E. 63rd St., Chicago
Seating Capacity - 1594
Playing Position - "C" Week



Jackson Park Theatre (Plaintiffs' Theatre)
6711½ S. Stony Island Ave.
Chicago, Illinois

Seating Capacity - 1458
Playing Position - First Week



3246 PARAMOUNT EXHIBIT 15.

(Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—4525) • •

Stipulation.

It is hereby stipulated by Thomas C. McConnell, attorney for the plaintiffs herein, that if Neil Agnew were present at the trial of said cause and were sworn as a witness to testify in said cause on behalf of the defendants Paramount Pictures Inc. and Balaban & Katz Corporation, he would testify in substance as stated below, and that this stipulation may be offered in evidence on behalf of the said defendants Paramount Pictures Inc. and Balaban & Katz Corporation at the trial of said cause:—

1. The said Agnew resides at 320 Park Avenue, New York City, New York, and his office is at 1501 Broadway, New York City.

The said Agnew is now vice-president in charge of sales for the United States and Canada of the defendant Paramount Pictures Inc., herein called for convenience Paramount. He was employed by said Paramount or its predecessors on January 3, 1920 at Chicago, Illinois, as a booker in the Chicago Exchange of said Paramount, and until 1925 he worked in various capacities in the Chicago Exchange territory as salesman and assistant sales manager, when he became branch manager of the Chicago Ex-
3247 change except for the period from February 19, 1923 to October 15, 1923, when he was branch manager of the Milwaukee Exchange.

As branch manager his duties were to supervise the operation of all phases connected with the conduct of the business of the branch, including sales, which is the negotiation of contract obligations, supervise the salesmen, supervise the booking and accounting departments, contract departments and shipping and inspection departments. He was branch manager until the year 1930, when he became district manager with headquarters at Chicago.

He had supervision over Chicago, Detroit, Indianapolis and Milwaukee Exchanges.

On November 7, 1932 he was transferred to the Home Office at New York, at 1501 Broadway, in the capacity of western division manager. As western division manager his principal duties were to supervise and have charge of sales for the western division which covered all territory west of Detroit at that time. He remained in that capacity until 1935 when he became general sales manager and later vice-president in charge of sales, which position he now holds.

2. There has never been to Agnew's knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the defendants and any other defendant to maintain in the City of Chicago and its environs, a system of releasing motion picture film for exhibition in theatres owned, leased or operated by any of the defendants or by their subsidiaries or affiliates, or any theatres owned, leased or operated by any other firm, person or corporation.

3248 3. There has never been to Agnew's knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the defendants and any other defendant whereby in the releasing of motion picture films for exhibition in the City of Chicago and its environs, theatres owned, leased or operated by any of the defendants or by their subsidiaries or affiliates are given or were to be given preference and priority of prior runs and clearance in the exhibition of motion pictures over independent or other theatres, excepting agreement, understanding, negotiation or communication had or made between Paramount and the operator of any motion picture theatre in the ordinary course of business of making and entering into license agreements for exhibition of its pictures in said theatre.

4. There has never been to Agnew's knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the defendants and any other defendants to introduce double features in theatres owned or operated by any of the defendants.

5. There has never been to Agnew's knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the distributor defendants and any other distributor defendant relative to the man-

ner in which any one of them or more of them or all of them should deal with the plaintiffs' theatre or any other theatres or refrain from so dealing or as to the run to be licensed to any of such theatres or the clearance to be granted with respect to any of such theatres.

6. There has never been to Agnew's knowledge any agreement, conspiracy, understanding, negotiation or
3249 communication between any defendant distributor or any other exhibitor relative to the manner in which any one or more of them or all of them should deal with the Jackson Park Theatre or refrain from so doing or as to the run to be licensed to Jackson Park Theatre or the clearance to be granted over it other than such run or clearance provisions as may be contained in the individual license agreement between Paramount Pictures Inc. and the Jackson Park Theatre and the exhibitor defendants or any other exhibitors for the exhibition of Paramount pictures.

7. If in fact there had ever been any such agreement, conspiracy, understanding, negotiation or communication of the character above mentioned to which Paramount was a party, it would have come to Agnew's attention in the performance of his duties.

George G. O'Brien,
Attorney for Plaintiffs.

March 1944.

3250 PLAINTIFFS EXHIBIT 16

MARYLAND

	1936	1937	1938	1939	1940	1941	1942
1	3	2	2	2	2	2	2
2	3	2	2	2	2	3	2
3	4	2	3	2	2	2	2
4	4	2	2	2	3	2	2
5	4	2	2	2	2	2	2
6	3	2	2	2	2	2	2
7	4	2	2	2	3	2	3
8	4	2	2	3	2	2	2
9	3	2	2	2	3	2	2
10	3	2	3	2	3	3	2
11	3	2	2	2	2	2	2
12	3	2	2	2	3	2	2
13	3	2	2	2	2	2	2
14	3	2	2	2	2	2	2
15	3	2	2	2	2	2	2
16	3	2	2	2	2	2	2
17	3	3	2	2	2	2	2
18	3	2	2	2	2	2	2
19	3	2	2	2	2	2	2
20	3	2	2	2	2	2	2
21	4	2	2	2	2	2	2
22	3	2	2	2	2	2	2
23	3	2	2	2	2	2	2
24	3	2	2	2	2	2	2
25	3	2	2	2	2	2	2
26	3	2	2	2	2	2	2
27	3	2	2	2	2	2	2
28	3	2	2	2	2	2	2
29	3	2	2	2	2	2	2
30	3	2	2	2	2	2	2
31	4	2	2	2	2	2	2
32	4	2	2	2	2	2	2
33	4	2	2	2	2	2	2
34	3	2	2	2	2	2	2
35	3	2	2	2	2	2	2
36	3	2	2	2	2	2	2
37	3	2	2	2	2	2	2
38	3	2	2	2	2	2	2
39	3	2	2	2	2	2	2
40	3	2	2	2	2	2	2
41	3	2	2	2	2	2	2
42	3	2	2	2	2	2	2
43	3	2	2	2	2	2	2
44	3	2	2	2	2	2	2
45	3	2	2	2	2	2	2
46	3	2	2	2	2	2	2
47	3	2	2	2	2	2	2
48	3	2	2	2	2	2	2
49	3	2	2	2	2	4	2
50	3	2	2	2	2	3	2
51	3	2	2	2	2	2	2
52	3	2	2	2	2	3	2
	168	220	218	212	230	238	128

3251 COMPARISON OF PICTURES PLAYED AT JACKSON PARK AND WOODLAWN THEATRES

(Compiled from daily newspaper advertisements in a test check period)

Last Four Months of	Identical Pictures Played by each	Played First by Jackson Park	Played First by Woodlawn	Played starting Day and Date by each
1918	47	3	40	4
1919	33	1	30	2
1920	No. adv			
1921	25	0	23	2
1922	22	1	21	0
1923	20	0	20	0
1924	23	0	23	0
1925	15	0	14	1
1926	0	0	0	0

3252 COMPARISON OF PICTURES PLAYED AT TIVOLI AND JACKSON PARK THEATRES

(Compiled from daily newspaper advertisements in a test check period)

Last Four Months of	Identical Pictures Played by each	Played First by Tivoli	Played First by Jackson Park	Played Starting Day and Date by each
1921	11	11	0	0
1922	15	14	1	0
1923	15	15	0	0
1924	3	3	0	0
1925	7	6	0	1
1926	6	6	0	0

3253 COMPARISON OF PICTURES PLAYED AT JEFFEREY AND JACKSON PARK THEATRES

(Compiled from daily newspaper advertisements in a test check period)

Last Four Months of	Identical Pictures Played by each	Played First by Jeffrey	Played First by Jackson Park	Played Starting Day and Date by each
1925	14	14	0	0
1926	17	13	3	1

3254

COMPARISON OF PICTURES PLAYED AT JACKSON PARK AND HAMILTON THEATRES

(Compiled from daily newspaper advertisements in attest check period)

Last Four Months of	Identical Pictures Played by each	Played First by Jackson Park	Played First by Hamilton	Played Starting Day and Date by each
1916	2	1	1	0
1917	11	9	2	0
1918	1	1	0	0
1919	3	2	1	0
1920	No adv.			
1921	1	0	1	0
1922	45	44	1	0
1923	47	45	0	2
1924	40	37	3	0
1925	65	39	4	2
1926	41	36	5	0

A. 3255

ANALYSIS OF MOTION PICTURES EXHIBITED AT JACKSON PARK THEATRE

(Compiled from daily newspaper advertisements during a test check period last four months each year 1916–1926, incl.)

	1916	1917	1918	1919	1921	1922	1923	1924	1925	1926
A. The number of pictures played at Jackson Park	30	98	95	96	90	90	109	114	109	90
B. The number of pictures played "clear" by Jackson Park (not played by others, or ahead of others)	47	63	17	46	35	31	46	56	51	38
C. The number of pictures on which Jackson Park had a split first run with one or more others	0	16	9	7	9	3	6	6	13	5
D. The number of pictures played by Jackson Park in second run	10	18	49	38	33	45	35	31	23	17
E. The number of pictures played by Jackson Park in third run	2	1	20	5	11	11	17	21	13	9
F. The number of pictures played by Jackson Park in fourth or later run	1	0	0	0	0	0	5	0	3	12

No advertisements in 1920.

2916 In the District Court of the United States.

(Caption—4525)

STENOGRAPHIC TRANSCRIPT

of certain of the proceedings had on the hearing of the above-entitled cause in said Court, before the Honorable Michael L. Igoe, Judge, presiding; said cause having come on for hearing upon the motions of the defendants after verdict, on Friday, the 19th day of May, A. D. 1944, at the hour of two o'clock P. M.

2917 Mr. Adcock:

Now, your Honor, I would like to take up this matter of Plaintiffs' Exhibit 123 for identification; and as I have stated one of the grounds for a motion for a new trial is that that exhibit was in the jury room before the jury and read and examined by certain of the jurors, this exhibit which was never received in evidence.

The stipulation, has your Honor read that? Suppose I read it.

Stipulation As to Certain Evidence Relating to the Joint and Several Motion for New Trial by the Defendants.

It is hereby stipulated by counsel for all parties, that if two or more of the jurors in the trial of the above entitled cause before Honorable Michael L. Igoe, one of the judges of said court, in his courtroom at the United States Court house, Chicago, Illinois, the trial of which case before the court and jury commenced on February 14, 1944, and was concluded on March 9, 1944, when the jury rendered their sealed verdict, were called and sworn to testify to

2918 the truth before the court, they would testify, in substance, that on the 9th of March, 1944, after the court had instructed the jury and after the jury had retired to the jury room to deliberate upon their verdict, there was present in the jury room in the presence of the jury, among other documents, a certain document marked for identification Plaintiffs' Exhibit 123, a true copy of which is attached hereto; that prior to arriving at their verdict, the said jurors saw, observed and examined the contents of said document while it was so present in the

jury room as aforesaid. The foregoing statement as to what the jurors would testify shall have the same force and effect as if the jurors had appeared in court in person and were sworn and testified in substance as above set forth.

Dated April 25, 1944.

Then there follows, your Honor, a copy of the exhibit

. . .

Since the motion for a new trial was filed and probably three or four weeks ago this stipulation was made between counsel,—so the question as to whether or not the exhibit was before the jury is no longer a matter of dispute. And we want to offer in evidence,—I think we should, there were a number of counter affidavits filed,—we want to offer in evidence this stipulation, which has been filed in court.

. . .

We also want to offer in evidence the affidavits that were filed in support of the motion for new trial and the counter affidavits which were filed later in opposition to those which were filed by the plaintiff.

Mr. McConnell: I am willing that they be considered and be in the record.

Mr. Adcock: And have the same force and effect as if the makers thereof appeared and testified.

Mr. McConnell: With this exception: There were affidavits here by Mr. O'Brien which I am going to raise objection to.

The Court: That is the affidavit about his visit to a witness?

2919 Mr. McConnell: The affidavit in which he states what some juror told him.

The Court: Yes.

Mr. Adcock: As to the deliberations.

Mr. McConnell: Well, anything the jury said is hearsay when repeated by Mr. O'Brien.

Mr. Adcock: Well, I should think, so far as that portion of the affidavit is concerned, why we don't care about it, do we?

Mr. O'Brien: Well, wait until I hear what Mac has to say. I don't know.

. . . . .

Mr. O'Brien: Judge, on the record, as I understand it, Mr. McConnell, the various affidavits and counter affidavits

submitted with the motion and in opposition to the motion may be considered as being in evidence with the same effect as if they had testified here, with relation to the motion for new trial, except the part of my affidavit wherein I relate the conversation which I had with the jury, which Mr. McConnell regards as hearsay, may be excluded on that basis, that it is not competent evidence.

Mr. McConnell: Let us make the record this way. I make a motion to strike from the O'Brien affidavit Mr. O'Brien's relation of what Valles told him, as hearsay.

The Court: Outside of that, it may go in.

Mr. O'Brien: That is all right. I understand Mr. McConnell has that objection, but I want to make this point for the record, because this is a record, we have a right in connection with the motion for new trial to assign such cause as I have for invoking a hearing and 2920 inquiring into the facts. I don't want the record to be in such shape that that statement is stricken for all purposes. I am willing to say, in view of the circumstances as they now exist, that I would have no occasion now than when they were to testify. I don't know whether I make that clear or not.

Mr. McConnell: You don't want to be accused of not stating the facts, is that it?

Mr. O'Brien: No, that is not it. I mean that at the time the motion for new trial was presented that was the only information which I had, perhaps which any of the people had, and, in the motion for new trial, I asked the Court to hold a hearing to find out what the fact was, and that was my basis for doing so. I don't offer it now or then as evidence, but I offer it as the reason for requesting the Court to conduct a hearing on the matter.

The Court: When did you make that motion?

Mr. O'Brien: In the written motion for new trial.

The Court: But outside of that you have not?

Mr. O'Brien: No, because subsequently Mr. McConnell stipulated that if the jurors were called here and if we did have the hearing, that two of more of them would testify that that exhibit was in the jury room.

The Court: Yes.

Mr. McConnell: I do not stipulate, though, that Valles would testify to what you said in your statement. I did not stipulate to that at all.

The Court: I understand that. You have stipulated that if the jurors were brought in they would testify that the exhibit was in the jury room.

Mr. McConnell: That is right.

Mr. Adcock: In other words, the stipulation accomplished what would have been accomplished by the hearing you asked.

2921 Mr. McConnell: But I don't want in the record a hearsay statement of a juror as to what he considered about this document. • • •

2922 In the District Court of the United States.

• • (Caption—4525) • •

Before Judge Igoe.
Monday, August 21, 1944.
10:00 o'clock A. M.

Court met pursuant to adjournment.

Present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Seeley,
Mr. O'Brien.

The Clerk: Bigelow versus RKO *et al.*. Plaintiffs' motion for injunction and fixing of attorneys' fees.

2923 Mr. McConnell: If the Court please, I think that Mr. Adcock's matter should come first here. He has prepared a bond on appeal, and submitted securities, filed them with the Chicago Title & Trust Company. We are all in agreement on it, and it is a mere matter of the approval of that bond.

I understand he has also filed a notice of appeal.

Mr. O'Brien: That is for all the defendants.

Mr. Adcock: I have an order approving the bond, and I would like your Honor to indicate on the bond itself your approval.

The Court: You have all agreed so far as the order is concerned, you say?

Mr. Adcock: Yes.

Mr. McConnell: That is right, your Honor. There is no objection.

The Court: You want the bond approved, did you say, the approval on the bond?

Mr. Seeley: Yes.

The Court: In addition to the order?

Mr. Adcock: Yes. The order recites that it will be approved, it will be endorsed on the bond, your approval.

Mr. Seeley: Is there a space providing for that?

2924 Mr. Adcock: No, there is not; just the bond.

The Court: What?

Mr. Adcock: On the bond there is not any space providing for that.

The Court: Just mark it "Approved", then.

Mr. Adcock: Have you got two copies of the bond?

The Court: Yes.

Mr. Adcock: Only one is sufficient.

The Court: Then mark it "Approved". Is that what you want?

Mr. Adcock: That is all, on the original.

Mr. O'Brien: "Approved, Judge."

The Court: What?

Mr. O'Brien: Put "Approved, Judge", right on it.

Mr. Adcock: Yes. There is one copy that should be handed back to me. By mistake it was handed up to your Honor. That is your copy (addressing Mr. McConnell).

Then there is another order with reference to sending up the original Exhibits, and the extension of the time in which to file our record with the Court of Appeals, and with reference to the form of the statement of points.

The Court: There shouldn't be any objection to

2925 that, should there?

Mr. McConnell: No, nos. Did you have your order of continuance entered, continuing the time for your record?

Mr. Adcock: That is in that order.

The Court: Ninety days, August 18th.

Mr. Adcock: That is right.

2926 Mr. McConnell: Now, we also have here, your Honor, the question of the injunction; and I have talked to counsel about that.

It seems to me that the questions which are involved in that issue are the same questions which are involved in the law branch of the case; and since that is going to the Circuit Court of Appeals on appeal, and the questions which

are involved there will be estoppel by verdict, in my opinion, when they come back, it seems to me that everyone's interests are probably better served if that matter goes over until after the disposition of the case in the Circuit Court of Appeals.

Now, I talked to counsel about it. I do not think they are in entire agreement with me on that statement, but I think they wanted to consider that further; and as I understand it, they have no objection to the matter being continued here this morning.

Mr. Adcock: To be taken up by either party on five days notice.

The Court: The other case can go up with reference this branch of it, can't it?

Mr. McConnell: Yes; two different lawsuits in one, under our practice. It is sort of a anomalous pro-
2927 cedure.

The Court: If they decide the one question up there, it would not be difficult to decide both lawsuits.

Mr. McConnell: That is right. It will conclude it for all practical purposes.

The Court: If you lose up there you are not interested in your injunction.

Mr. McConnell: Yes.

The Court: And if you win it up there you can come in and talk about the injunction.

Mr. McConnell: That is right. For all practical purposes it concludes all our rights all the way through, it seems to me. The only other question—

Mr. Adcock: As I understand it, the motion or the application for an injunction will be continued generally?

The Court: Yes, sir.

Mr. Adcock: On motion of the plaintiffs, to be taken up on five days notice.

The Court: Yes.

Mr. McConnell: The only other question we have here before your Honor is the fixing of the costs.

The judgment was entered for so much money, and
costs, and included in that amount was attorneys'
2928 fees which were to be fixed by the Court pursuant to the statute.

In order to shorten this thing up, not taking much of the Court's time, I prepared a statement of what I would testify to if we had a formal hearing.

Counsel, I understand, for reasons in connection with their own situation, do not want to sign a formal stipulation, but they have agreed, as I understand it, that my statement of what I would testify to may be taken by the Court Reporter as part of the record and may be made the basis for whatever disposition the Court wishes to make of the matter of attorneys' fees.

Mr. Seeley: That is right; with the same effect as though you had been sworn and so testified.

Mr. McConnell: This statement is simply a statement as to how long I have practiced law. I have practiced in Illinois since October, 1924. It recites my connections with Bar Associations, the ordinary thing. It states I have spent over 1300 hours in the trial and the preparation of this lawsuit, and sets forth generally the work which was done, in the preparation of briefs, examination of evi-
dence, and so forth, prior to trial, and the trial it-
2929 self, most of which your Honor is familiar with, because practically everything I did in this lawsuit was done in front of your Honor.

For those services the plaintiffs ask, as part of their costs, the fixing of an amount of $35,000.

There was a judgment here of $360,000, as the Court knows, and that is a little less than ten per cent.

I have some decisions here if the Court wishes to hear from me. In the Rankin case there was a judgment of $277,000, and there was an allowance made to counsel of $25,607.09.

Mr. Adcock: I think it was forty-two thousand.

Mr. McConnell: That is right, $42,500 attorneys' fees on a judgment of $277,000; and $7,000 additional in the Circuit Court of Appeals for the work that was spent on the appeal.

Now, the amount that is asked here is considerably less proportionately; the judgment is more, but the proportion is much less in amount.

Mr. Adcock: I just want to say that in the Rankin case I think there were $7,000 attorneys' fees. There were two suits; and twenty-five thousand was involved in one
suit, and $7,000 attorneys' fees was allowed in the
2930 other. I don't think there was anything allowed on the appeal.

Mr. Korfist: That is right.

Mr. McConnell: I am thinking of this other case. That is right, it was $42,500.

I don't want to make any formal argument on that branch of the case. I don't want to make any formality out of it. It seems to me that the matter is best left entirely in your Honor's discretion. It is a matter that has to be concluded as part of the costs.

The only other costs involved here are the costs of bringing the suit, the suit fee, service charges, and the issuance of subpoenaes, which amount here to about $42, or something like that.

I think that is all I have to present, your Honor.

2931 IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—4525) * *

STIPULATION.

It is hereby stipulated by and between the parties hereto, by their respective counsel of record, that if a hearing in the matter of the taxing of the costs were held in open Court that Thomas C. McConnell would testify as follows:

That he is an attorney duly licensed as such to practice in this Court and was admitted to practice before the Supreme Court of Illinois in October 1924; that he is a graduate of Harvard College and Harvard Law School and has practiced law continuously in Chicago since the date of his admission to the Illinois bar;

That he is a member of The Chicago Bar Associ-
2932 ation, The American Bar Association, The Illinois State Bar Association, The Legal Club and The Law Club of Chicago;

That he has appeared as counsel for the plaintiffs in this case and has represented them in the preparation of the case, the preliminary motions and at the trial; that he has not kept detailed time records of time spent on the case because he was not employed by the plaintiffs on a time basis but was paid a cash retainer fee and the balance of his fee is based on a percentage dependent on the successful outcome of the case and that the amount of money due him out of any recovery by the plaintiffs in this case is in excess of the amount of money claimed by the plaintiffs in their petition to tax attorney's fees as costs;

That from such records as have been kept and from personal knowledge he would testify that he has spent on

the case in excess of thirteen hundred (1300) hours of time during the period commencing February 10, 1942 down to the date of the overruling of the motion for a new trial on June 1, 1944; that the services performed by him during such period of time included the following:

2933 Consultations with the plaintiffs and with prospective witnesses;

Investigation of facts; legal research;

Preparation and filing of the complaint;

Preparation of briefs in opposition to motions to dismiss, to quash the summons and for a bill of particulars, and oral argument on such motions;

Various appearances in court from time to time on motions for the setting of the case;

Conferences with opposing counsel;

Taking of pre-trial depositions and the representation of the plaintiffs at the taking of depositions by the defendants;

Examination of documents and film contracts;

Examination of various witnesses prior to trial;

Legal and factual research in preparation for trial;

The trial of the case before a jury, including the examination and cross-examination of witnesses, the arguments of motions, the preparation of instructions, and the final arguments in the case;

Preparation of briefs in opposition to motions for a new trial and judgment notwithstanding the verdict and the oral argument of the same, and conferences with opposing counsel as to the various matters and procedure subsequent to the trial;

That he has had considerable experience in the handling of contested litigation in various courts, involving large sums of money; that in the District Courts of the

2934 United States he has, among other litigation, appeared as one of counsel for the plaintiffs in the case of Faber *vs.* Factor, in which a recovery of $1,400,000 was obtained and compensation to attorneys in the amount of 20% was allowed; as counsel for the plaintiff in the case of Ashman *vs.* Miller, in which a recovery of $600,000 was had and fees allowed in the sum of $100,000; as counsel for the defendant in the case of Murphy *vs.* Country Club Building Corporation, involving the validity of $240,000 of bonds, in which case $21,750 was allowed as

his fee, and that from such experience he is familiar with the rules for the determination of fair and reasonable compensation to an attorney in the handling of matters of this kind;

That the elements taken into consideration here and which form the basis for his opinion as to the value of his services are the nature of the controversy, the difficulty of the problems involved, and the result obtained; that in giving an opinion as to the value of said services no consideration has been given to any contingent feature of the compensation and that in his opinion the sum
2935 of Thirty-five Thousand Dollars ($35,000) is a fair and reasonable charge for the services rendered by him.

(Signed) Thomas C. McConnell,
Counsel for Plaintiffs.

Counsel for Defendants."

2936 Mr. Seeley: I have only this to say about the fees: My clients feel that the amount is greater than it should be. I do not care to indicate the smaller amount because I find it very difficult to be both fair to Mr. McConnell and to protect the rights of my clients as rigorously as they might want.

I do wish to indicate to the Court, however, that they feel that the amount is high, and I am willing to leave the final decision with your Honor.

Mr. Adcock: I have nothing to add to that. I adopt the statement of Mr. Seeley, in regard to my client's rights.

The Court: What do you say, Mr. O'Brien?

Mr. O'Brien: Oh, I think that represents the consensus of everybody.

The Court: Well, it is agreed that if he were to testify, that—

Mr. O'Brien: Oh, there is no question about that.

The Court: (Continuing:)—he would testify as he has stated here.

Mr. Adcock: Yes.

Mr. O'Brien: No question about that.

The Court: Thirteen hundred hours; and that includes your time in court, as well as other work?

2937 Mr. McConnell: Yes, that includes everything.

Mr. O'Brien: Everything. Further, the law of course, in the last analysis it is up to the Court, not like other matters, not merely advisory: Neither side is calling in experts.

Mr. Adcock: The statement also states, your Honor, so that your Honor will know, that he had an arrangement with his clients which I believe was on some contingent basis, which would be more than the amount of $35,000 that he asks.

Mr. McConnell: That is true. It states that unequivocally the fees which my clients are obligated to pay me are in excess of $35,000. This allowance, of course, goes to the plaintiffs; it does not go to me.

The Court: You have a judgment here for three hundred and what?

Mr. McConnell: —$60,000.

The Court: And thirteen hundred hours—I don't know. The limit we have been allowing here is $20 an hour.

Mr. McConnell: Well, I would suggest this to your Honor: That this is not the sort of a case which is usually compensated for on an hourly basis. It is a matter where a man's compensation is—

2938 The Court: Well, if it were allowed at $20 an hour, that would bring you up to $26,000, and you did spend about three weeks here in court, didn't you, or longer than that?

Mr. McConnell: Four weeks, I think.

The Court: I will fix the attorneys' fees at $30,000.

Mr. McConnell: I will serve notice, and present a draft order on that.

Mr. Seeley: You don't need to serve notice. You can send us the order, and we can mark on there "O. K.", as to the form of it.

Mr. Adcock: You will have it ready in the morning, no doubt?

Mr. McConnell: Yes.

Mr. Adcock: So we can just understand, you will come in in the morning?

Mr. McConnell: Yes.

Mr. Seeley: Thank you.

2939 IN THE DISTRICT COURT OF THE UNITED STATES
(Caption—4525)

Certificate of Elmer A. Eulass, Doing Business as E. A. Eulass & Co., Court Reporters.

The undersigned, Elmer A. Eulass, doing business as E. A. Eulass & Co., certifies as follows:

(1) E. A. Eulass & Co. has been for more than thirty years and is now engaged in the business of court reporting in state and federal courts, having a place of business at 155 North Clark Street, Chicago. In such business he employs court reporters who attend in court and take down in shorthand notes and transcribe in typewriting the proceedings with respect to which the undersigned has been employed.

(2) In the above case of Bigelow vs. RKO Radio Pictures, Inc., the undersigned was employed by the defendants to, and there was taken and transcribed in the manner as aforesaid, the proceedings in said cause, and during the trial of said cause before the jury usually three court reporters in the employ of the undersigned were engaged in taking shorthand notes and transcribing same, and daily copies of the transcript were furnished defendants' counsel, no single one of said court reporters being in attendance in court at all times.

(3) The foregoing, to which this certificate is at-
2940 tached, consisting of approximately 2855 pages, is a copy, except as to the matters stated in paragraphs "(a)" and "(b)" below, furnished in the ordinary course of business of the undersigned during the proceedings in said cause to defendants' counsel of reporter's transcript in said cause of all the evidence and proceedings at the trial, including the instructions submitted by the different parties, objections thereto, observations on such objections, and rulings of the court thereon, the court's charge to the jury, and renewal of the defendants' objections, and that portion of the reporter's transcript at the hearing before the court on May 19, 1944 with reference to the stipulation between counsel for all parties with respect to the receiving in evidence of stipulation as to Pl. Ex. 123 id. being present in the jury room and the affidavits filed by defend-

ants and the plaintiffs in connection with motion for new trial being treated as in evidence as if the makers of the affidavits had appeared and testified and the transcript of the proceedings before the court of August 21, 1944 with respect to the fixing of attorneys' fees of the plaintiffs as part of the costs.

(a) The language in the parentheses at page 882

"(Said documents, so offered, were received in evidence as Plaintiffs' Exhibits 123 and 123-A, and are in words and figures as follows, to-wit:)"

has been deleted by the undersigned by drawing blue pencil lines through the words in parentheses because such language was inadvertently interpolated by the reporter in said transcript and such language is not a transcript of any of the court reporter's shorthand notes and was incorrect, as shown by the court reporter's shorthand notes.

2941 (b) Certain red and black pencil marks and writings appear on certain pages of the foregoing transcript, other than on said page 882 as above mentioned, with respect to which the undersigned has no knowledge.

(4) The undersigned further certifies that the foregoing, consisting of approximately 2855 pages, to which this certificate is attached, is a true and correct transcript of the evidence and proceedings described except as to the matters and things stated in sub-paragraph (b) of paragraph (3) above.

(5) There are appended hereto and made a part of this certificate, the affidavits of Elmer A. Eulass and Michael T. Organ.

Elmer A. Eulass,
Doing business as E. A. Eulass & Co.

Dated October 4, 1944.

2942 State of Illinois, }
County of Cook. } ss.

Elmer A. Eulass, being first duly sworn, on oath deposes and says that he is a resident of the county and state aforesaid; that affiant has been engaged in court reporting in federal and state courts located in Cook County, Illinois, and elsewhere continuously for fifty years last past; that affiant manages the said business and generally oversees the work done by E. A. Eulass & Co. in connection with its business of court reporting; that Michael T. Organ was one of the court reporters who worked on the court reporting job in connection with the trial and proceedings in *Bigelow et al v. RKO et al.* #4525 in the District Court of the United States, for the Northern District of Illinois, Eastern Division, beginning with the date of the commencement of the trial of said cause, February 14, 1944, to the end of the trial when the case was submitted to the jury; that affiant has examined the foregoing transcript of the evidence and proceedings, consisting of 2855 pages; that Michael T. Organ was the court reporter who took in shorthand and then transcribed the material appearing in the foregoing transcript from page 878 to and including page 902, as well as material appearing at other places in said transcript.

Affiant further says that the statements of facts contained in the foregoing certificate of E. A. Eulass & Co. are true, based upon the investigation made by and the knowledge and belief of the affiant.

Elmer A. Eulass.

Subscribed and sworn to before me this 4th day of October, A.D. 1944.

Bessie C. Breyer,
Notary Public.

(Seal)

2943 State of Illinois, } ss.
County of Cook. }

Michael T. Organ, being first duly sworn, on oath deposes and says that he is a resident of the county and state aforesaid; that he is a court reporter connected with E. A. Eulass & Co. of 155 North Clark St., Chicago, Ill., who was the court reporter for the defendants in the case of *Bigelow et al* v. *RKO et al.*, =4525 in the District Court of the United States, for the Northern District of Illinois, Eastern Division; that he has read the foregoing certificate of Elmer A. Eulass, doing business as E. A. Eulass & Co., and the foregoing affidavit of Elmer A. Eulass; that the statements of fact contained in said certificate and affidavit are true.

With respect to the material appearing in the parentheses at page 882 of the transcript described in the certificate of Elmer A. Eulass, doing business as E. A. Eulass & Co., affiant states that the language contained in said parentheses was interpolated by affiant in said transcript; that affiant's shorthand notes of that proceeding do not contain any statement that the said documents Pl. Exs. 123 and 123-A for identification were received in evidence, nor do said notes contain any statement from which an inference could be drawn that the said documents were received in evidence; and affiant has no recollection of anything being said by the court or any one else on February 23, 1944, or prior or subsequent, in open court, to the effect that they were received in evidence or from which an inference could be drawn that they were so received.

Michael T. Organ.

Subscribed and sworn to before me this 4th day of October, A. D. 1944.

Pearl Hall,
(Seal) *Notary Public.*

2944 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

STIPULATION REGARDING COPIES OF CERTAIN EXHIBITS AS A PART OF THE REPORTER'S TRANSCRIPT.

It is hereby stipulated by and between the parties hereto, represented by their respective counsel, as follows:

(1) This stipulation may be attached to reporter's transcript of the evidence and proceedings.

(2) There shall be attached to and made a part of the reporter's transcript of the evidence and proceedings copies of certain documentary exhibits described as follows:

2945 Pl. Ex. 1—Purchase Agreement between plaintiffs and father Oct. 26, 1936—theatre building and other property.

Pl. Ex. 11—Film license Vitagraph to Jackson Park Theatre December 31, 1940 from Pl. Ex. 11.

Pl. Ex. 14—Film license Paramount to Jackson Park Theatre October 7, 1939, from Pl. Ex. 14.

Pl. Ex. 17—Film license Loew's to Jackson Park Theatre April 29, 1938, from Pl. Ex. 17.

Pl. Ex. 20—Film license RKO to Jackson Park Theatre November 30, 1938, from Pl. Ex. 20.

Pl. Ex. 23—Film license Fox to Jackson Park Theatre November 15, 1940, from Pl. Ex. 23.

Pl. Ex. 27—Film license Columbia to Jackson Park Theatre October 12, 1939, from Pl. Ex. 27.

Pl. Ex. 30—Film license United Artists to Jackson Park Theatre February 8, 1939, from Pl. Ex. 30.

Pl. Ex. 33—Film license Universal to Jackson Park Theatre December 9, 1938, from Pl. Ex. 33.

Pl. Ex. 35—Film license Central States Pictures to Jackson Park Theatre June 28, 1937, from Pl. Ex. 35.

Pl. Ex. 36—Film license Republic Pictures to Jackson Park Theatre November 28, 1939, from Pl. Ex. 36.

Film license Gaumont British Picture Corporation to Jackson Park Theatre October 13, 1938, from Pl. Ex. 36.

Film license Malmar Pictures to Jackson Park Theatre February 13, 1939, from Pl. Ex. 36.

Film license Monogram Pictures to Jackson Park Theatre October 6, 1937, from Pl. Ex. 36.

Film license B. N. Judell, Inc. to Jackson Park Theatre August 11, 1938, from Pl. Ex. 36.

Film license Albert Dezel to Jackson Park February 17, 1938, from Pl. Ex. 36.

Pl. Ex. 37—Film license Calumet Film Corporation to Jackson Park March 20, 1942, from Pl. Ex. 37.

Pl. Ex. 44—Statement of income and expenses Maryland Theatre 1936-42.

Pl. Ex. 45—Chart showing Balaban & Katz Theatres in Chicago.

2946 Pl. Ex. 46—Franchise MGM to Balaban & Katz dated September 1, 1936.

Pl. Ex. 47—Comparison Jackson Park Theatre admissions and film rental with Maryland Theatre admissions and film rental from July 28, 1937 to July 27, 1942.

Pl. Ex. 48—Statement of plaintiffs' damage claims on two theories of measure of damage.

Pl. Ex. 49—Jackson Park Theatre profit and loss statements 1936-42.

Pl. Ex. 54—Clearance schedule dated September 3, 1936, between Twentieth Century-Fox and Balaban & Katz.

Pl. Ex. 60—Film license Fox to Balaban & Katz July 14, 1939 with license fee and clearance agreements part of same, from Pl. Ex. 60.

Pl. Ex. 69—Clearance agreement for the season 1938-39 between Balaban & Katz and Paramount.

Pl. Ex. 78—Clearance agreement between Balaban & Katz and RKO for the season 1938-39.

Pl. Ex. 79—Clearance schedule between RKO and Balaban & Katz dated October 23, 1940.

Pl. Ex. 84—License from RKO to Balaban & Katz November 18, 1938.

Pl. Ex. 116—License from Vitagraph to Balaban & Katz September 19, 1939, from Pl. Ex. 116.

Pl. Ex. 118—Clearance schedules seasons from 1936-37 to 1941-42 both inclusive, between Fox and Warner Bros. Circuit Management Corporation.

Pl. Ex. 119—Clearance schedules seasons from 1936-37 to 1941-42 both inclusive, between Paramount and Warner Bros. Circuit Management Corporation.

Pl. Ex. 120—Clearance schedules seasons from 1936-37 to 1941-42 both inclusive, between Warner Bros. Circuit Management Corporation and Warner Bros. pictures.

Pl. Ex. 121—Clearance schedules seasons 1936-37 to

1941-42 both inclusive, between Warner Bros. Circuit Management Corporation and RKO Radio Pictures, Inc.

Pl. Ex. 122—Clearance schedules seasons 1936-37 to 1941-42 both inclusive, between Loew's, Inc. and Warner Bros. Circuit Management Corporation.

Pl. Ex. 126—Film license Fox to Warner Bros. Circuit Management Corporation dated August 11, 1938, from Pl. Ex. 126.

Pl. Ex. 131—Film license RKO to Warner Bros. Circuit Management Corporation Nov. 7, 1941, from Pl. Ex. 131.

Pl. Ex. 133—Film license Paramount to Warner Bros. Circuit Management Corporation Nov. 18, 1940, from Pl. Ex. 133.

2947 Pl. Ex. 144—Film license Loew's to Warner Bros. Circuit Management Corporation, 1937-38 and 1938-39 seasons, dated Sept. 19, 1937.

Pl. Ex. 155—Data relating to Balaban & Katz showing pictures played on percentage in loop theatres covering the seasons from 1936-37 to 1941-42, both inclusive.

Pl. Ex. 156-A—List of theatres shown on Pl. Ex. 156 with their respective addresses, seating capacity and playing positions.

Pl. Ex. 173—Compilation showing gross receipts of six loop theatres of Balaban & Katz for the years 1937 to 1942.

Warner's Ex. 12—List of theatres operated by Warner Bros. since 1930.

Warner's Ex. 13—Schedules showing admission prices charged at Avalon, Grove, Jeffery and Shore Theatres of Warner's 1930-42.

Warner's Ex. 16—Box office receipts from 1931 to 1943 at Jackson Park, Avalon, Jeffery, Hamilton, Shore, Lexington, Grove, Highland, Cosmo and Capitol Theatres.

Warner's Ex. 17—Attendance from 1936 to 1943 at Avalon, Jeffery, Hamilton, Shore, Grove, Highland, Cosmo and Capitol Theatres of Warner's.

Warner's Ex. 18—Memo re screeno and bank nite at Warner's Jeffery Theatre.

Paramount and Balaban & Katz Ex. 1—Letter July 6, 1942, from Jackson Park Theatre to Paramount.

Paramount and Balaban & Katz Ex. 10—Gross receipts of Tivoli Theatre from 1933 to 1943.

Paramount and Balaban & Katz Ex. 11—Gross receipts and film rental of Tower Theatre of Balaban & Katz—1933-42.

Paramount and Balaban & Katz Ex. 12—Graph showing gross receipts and film rental Tower Theatre of Balaban & Katz—1933-42.

Paramount and Balaban & Katz Ex. 13—Graph showing gross admissions and film rental Maryland Theatre from 1933 to 1942.

Paramount and Balaban & Katz Ex. 14—Graph showing gross admissions and film rental 1933-42 Jackson Park Theatre.

Paramount and Balaban & Katz Ex. 15—Stipulation as to Neil Agnew testimony.

Paramount and Balaban & Katz Ex. 16—Statement showing number of pictures exhibited by weeks and by years at Maryland Theatre 1936 to 1942, both inc.

RKO, Fox and Loew's Exs. B to F—Analysis of motion pictures exhibited at Jackson Park Theatre and at other theatres in the vicinity for the years 1916 to 1926.

2948 (3) This stipulation shall not be construed as limiting or qualifying in any respect the "Designation of the portions of the record, proceedings and evidence to be contained in the record on the appeal by the defendants-appellants to the United States Circuit Court of Appeals for the Seventh Circuit".

Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom,

Plaintiffs.

By Thomas C. McConnell,
Their Attorney.

RKO Radio Pictures, Inc., a corporation, Loew's, Incorporated, a corporation, and Twentieth Century-Fox Film Corporation, a corporation,

Defendants.

By Miles G. Seeley,
Their Attorney.

Paramount Pictures, Inc., a corporation, and Balaban & Katz Corporation, a corporation,

Defendants.

By Edmond D. Adcock,
Edward R. Johnston,
Their Attorneys.

Vitagraph, Inc., a corporation, Warner Bros. Pictures, Inc., a corporation, Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation,

Defendants-Appellants,

By Vincent O'Brien,

Their Attorney.

2949 Endorsed: In the District Court of the United States. * * (Caption—4525) * * Stipulation Regarding Copies of Certain Exhibits as a Part of the Reporter's Transcript.

2950 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

WAIVER RE FILING COPY OF TRANSCRIPT OF PROCEEDINGS AND COPIES OF EXHIBITS ATTACHED AND MADE A PART THEREOF.

The undersigned attorney for Plaintiffs-Appellees hereby waives the filing with the Clerk of this Court by Defendants-Appellants of more than one copy of reporter's transcript of the trial, evidence and proceedings in this cause and copies of exhibits and documents attached to and made a part of said transcript.

Thomas C. W. Pomell,

Attorney for Plaintiffs-Appellees.

2951 Endorsed: In the District Court of the United States. * * (Caption—4525) * *. Waiver Re Filing Copy of Transcript of Proceedings and Copies of Exhibits Thereof.

69 And afterwards on, to wit, the 23rd day of February, 1944 came the Defendants, RKO Radio Pictures, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Motion for Directed Verdict in words and figures following, to wit:

70 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—4525) * *

MOTION FOR DIRECTED VERDICT.

Now come the defendants RKO Radio Pictures, Inc., Loew's, Incorporated and Twentieth Century-Fox Film Corporation, by Mayer, Meyer, Austrian & Platt, their attorneys, at the close of the evidence offered by the plaintiffs in the above cause, the said plaintiffs having rested their case in chief, and severally move that the Court direct the jury to find the issues herein against the plaintiffs and in favor of said defendants and each of them, and give to the jury the attached instruction as follows:

"The jury are instructed to find the issues against the plaintiffs and in favor of each of the defendants RKO Radio Pictures, Inc., Loew's, Incorporated and Twentieth Century-Fox Film Corporation."

For specific grounds for their said several motions the said defendants say:

1. Plaintiffs have offered no evidence from which the jury could properly find that these defendants or any of them conspired in the manner charged in the plaintiffs' complaint.

2. The plaintiffs have introduced no evidence from which a jury could properly find that they have suffered injury to their property or business as a direct and proximate result of any act done by the defendants or any of them pursuant to the alleged conspiracy or conspiracies set forth in the plaintiffs' complaint.

3. The supposed evidence as to damages introduced by the plaintiffs is incompetent because it is speculative and conjectural as to the plaintiffs' claimed loss of profits.

4. The plaintiffs' evidence is insufficient in law to make out a prima facie case against these defendants or any of them.

Mayer, Meyer, Austrian & Platt,
By Miles G. Seeley,
A member of said firm
Attorneys for said Defendants.

71 And on the same day, to-wit, the 24th day of February, 1944, came the Defendants, Vitagraph, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Motion For Directed Verdict at Close Of Plaintiffs' Evidence in words and figures following, to-wit:

72 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

MOTION BY THE DEFENDANTS, VITAGRAPH, INC., WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, WARNER BROS. PICTURES, INC., AND WARNER BROS. THEATRES, INC., FOR DIRECTED VERDICT AT CLOSE OF PLAINTIFFS' EVIDENCE.

Come now the defendants, Vitagraph, Inc., Warner Bros., Circuit Management Corporation, Warner Bros. Pictures, Inc., and Warner Bros. Theatres, Inc., by Defrees, Eiske, O'Brien & Thomson, their attorneys, at the close of plaintiffs' evidence, and move the court that the jury be instructed to find said defendants and each of them not guilty. Said defendants set out the following specific grounds for said motion:

1. The evidence introduced by the plaintiffs fails to make out a prima facie case against these defendants or any of them as concerns all or any of the allegations of the complaint.

73 2. No facts have been proven from which the jury could find that any conspiracy existed.

3. There is no showing that these defendants or any of them were parties to or participated or joined in any conspiracy, or did any act pursuant to a conspiracy, which caused or resulted in any injury or damage to the plaintiffs' business or to their property.

4. There is insufficient evidence of the essential elements of plaintiffs' damage, if any, so that there is no

basis on which the jury can measure such damages in terms of money under applicable rules of law.

Vincent O'Brien,
Attorneys for Defendants, Vitagraph, Inc., Warner Bros. Circuit Management Corporation, Warner Bros. Pictures, Inc., and Warner Bros. Theatres, Inc.

74 And on the same day, to-wit, the 24th day of February, 1944 came the Defendants, Paramount Pictures, Inc., et. al., by their attorneys and filed in the Clerk's office of said Court their certain Motion For Directed Verdict At Close Of Plaintiffs' Evidence in words and figures following, to-wit:

75 IN THE DISTRICT COURT OF THE UNITED STATES
(Caption—4525)

MOTION OF DEFENDANTS, PARAMOUNT PICTURES INC. AND BALABAN & KATZ CORPORATION FOR DIRECTED VERDICT AT CLOSE OF PLAINTIFFS' EVIDENCE.

Come now the defendants Paramount Pictures, Inc. and Balaban & Katz Corporation, by Edmund D. Adcock and Arthur A. Goldberg, their attorneys, at the close of plaintiffs' evidence, and move the court to direct a verdict in favor of said defendants, and each of them, and that the jury be instructed to find said defendants, and each of them, not guilty.

And as specific grounds for said motion, the said defendants show:

(1) Upon the facts and law, the plaintiffs have shown no right to relief.

(2) The evidence introduced and received on behalf of the plaintiffs fails to make out a prima facie case against these defendants, or any of them, as concerns all or any of the allegations of the complaint.

(3) No facts have been proven from which the jury could find that any conspiracy existed.

76 (4) The plaintiffs have not shown that these defendants, or any of them, were parties to or partici-

pated or joined in any conspiracy or did any act pursuant to a conspiracy which caused or resulted in any injury or damage to the plaintiffs' business or to their property.

(5) The evidence is insufficient to show or establish the essential elements of plaintiffs' damage, if any, so that there is no basis on which the jury can measure such damage or damages in terms of money under applicable rules of law.

Edmund D. Adcock,
Arthur A. Goldberg,
Attorneys for Defendants, Paramount Pictures Inc. and Balaban & Katz Corporation.

February 23, 1944.

77 And afterwards, to-wit, on the 25th day of February, 1944, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe District Judge, appears the following entry, to-wit:

78 IN THE DISTRICT COURT OF THE UNITED STATES
(Caption—4525)

Friday, February 25, 1944.

Present: Honorable Michael L. Igoe, District Judge.

This cause coming on this day for further trial, again come the parties by their attorneys, and the Jury heretofore empanelled and sworn herein also come Arguments of counsel are heard and concluded.

On the motions of the defendants for a directed verdict, the Court being duly advised in the premises, It Is Ordered that said motions and each of them be and they are hereby overruled. Evidence is heard in part for the defendants and

It Is Ordered that the Jury be and they are hereby permitted to separate until February 28, 1944 at 10:30 A.M.

79 And afterwards, to-wit, on the 6th day of March, 1944, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to-wit:

80 IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—4525)

Monday, March 6, 1944.

Present: Honorable Michael L. Igoe, District Judge.

This day this cause coming on for further trial, come the parties by their attorneys, and the Jury heretofore empanelled and sworn herein also come Defendants, by their attorneys, enter their motion that the plaintiffs be required to elect the theory of damages relied upon, and the Court having heard the arguments of counsel thereon, and being fully advised in the premises, It Is Ordered that said motion be and it is hereby overruled

On agreement of all the parties, by their attorneys, now made in open Court, It Is Ordered that Mrs. Florence Voltz Wittleder, a juror herein, be and she is hereby excused from further service and that this cause proceed with eleven (11) jurors. Further evidence is heard for the defendants and

It Is Ordered that the Jury be and they are hereby permitted to separate until March 7, 1944 at 10:15 A. M.

81 And afterwards on, to-wit, the 7th day of March, 1944, came the Defendant, RKO Radio Pictures, Inc., by its attorneys and filed in the Clerk's office of said Court its certain Amendment to its Answer in words and figures following, to-wit:

82 IN THE UNITED STATES DISTRICT COURT
(Caption—4525)

AMENDMENT TO ANSWER OF RKO RADIO PICTURES, INC., TO PLAINTIFFS' COMPLAINT.

Now comes the defendant RKO Radio Pictures, Inc. by Mayer, Meyer, Austrian & Platt, its attorneys, and by leave of Court first had, amends its answer to the plaintiffs' complaint herein by adding thereto the following:

"The plaintiffs are estopped to complain of the so-called 'system of release' described in their complaint and alleged therein to have resulted from a conspiracy among the defendants by reason of the fact that the plaintiffs, with knowledge of the nature and effect of such alleged 'system', have participated therein and enjoyed the benefits thereof by entering into film license agreements with this defendant and other film distributors according the plaintiffs' theatre a run under said 'system' together with clearance over competing theatres, holding such competing theatres in later runs under the same 'system.'

Mayer, Meyer, Austrian & Platt,
Attorneys for said defendant.

By Miles G. Seeley,
A member of said firm.

83 And on the same day, to-wit, the 7th day of March, 1944, came the Defendant, Loew's Incorporated, by its attorneys and filed in the Clerk's office of said Court its certain Amendment To Its Answer in words and figures following, to-wit:

84 IN THE UNITED STATES DISTRICT COURT

* * (Caption—4525) * *

AMENDMENT TO ANSWER OF LOEW'S INCORPORATED TO PLAINTIFFS' COMPLAINT.

Now comes the defendant Loew's, Incorporated by Mayer, Meyer, Austrian & Platt, its attorneys, and by leave of Court first had, amends its answer to the plaintiffs' complaint herein by adding thereto the following:

"The plaintiffs are estopped to complain of the so-called 'system of release' described in their complaint and alleged therein to have resulted from a conspiracy among the defendants by reason of the fact that the plaintiffs, with knowledge of the nature and effect of such alleged 'system', have participated therein and enjoyed the benefits thereof by entering into film license agreements with this defendant and other film distributors according the plaintiffs' theatre a run under said 'system' together with clearance over competing theatres, holding such competing theatres in later runs under the same 'system.'"

Mayer, Meyer, Austrian & Platt,
Attorneys for said defendant.

By Miles G. Seeley,
A member of said firm.

85 And on the same day, to-wit, the 7th day of March, 1944, came the Defendant, Twentieth Century-Fox Film Corporation, by its attorneys and filed in the Clerk's office of said Court its certain Amendment To Its Answer in words and figures following, to-wit:

86 IN THE UNITED STATES DISTRICT COURT
(Caption—4525)

AMENDMENT TO ANSWER OF TWENTIETH CENTURY-FOX FILM CORPORATION TO PLAINTIFFS' COMPLAINT.

Now comes the defendant Twentieth Century-Fox Film Corporation by Mayer, Meyer, Austrian & Platt, its attorneys, and by leave of Court first had, amends its answer to the plaintiffs' complaint herein by adding thereto the following:

"The plaintiffs are estopped to complain of the so-called 'system of release' described in their complaint and alleged therein to have resulted from a conspiracy among the defendants by reason of the fact that the plaintiffs, with knowledge of the nature and effect of such alleged 'system', have participated therein and enjoyed the benefits thereof by entering into film license agreements with this defendant and other film distributors according the plaintiffs' theatre a run under said 'system' together with clearance over competing theatres, holding such competing theatres in later runs under the same 'system.'"

Mayer, Meyer, Austrian & Platt.
Attorneys for said defendant.

By Miles G. Seeley,
A member of said firm.

87 And on the same day, to-wit, the 7th day of March, 1944, came the Defendants, Vitagraph, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Amendment To their Answer in words and figures following, to-wit:

88 IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—4525)

AMENDMENT TO ANSWER OF VITAGRAPH, INC., WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, WARNER BROS. PICTURES, INC., AND WARNER BROS. THEATRES, INC.

Come now the defendants, Vitagraph, Inc., Warner Bros. Circuit Management Corporation, Warner Bros. Pictures, Inc., and Warner Bros. Theatres, Inc., by leave of court first had and obtained, and amend their respective answers heretofore filed herein by adding to such answers the following paragraph:

"(15) Plaintiffs are estopped and precluded from any recovery herein as against these defendants, or any of them, because plaintiffs seek to recover damages for acts not violative of any statute but for acts done pursuant to a system or method of doing business which plaintiffs claim was itself contrary to law, and in which system the plaintiffs participated and accepted the benefits thereof."

Vincent O'Brien,

Attorneys for Defendants, Vitagraph, Inc., Warner Bros. Circuit Management Corporation, Warner Bros. Pictures, Inc. and Warner Bros. Theatres, Inc.

89 And on the same day, to-wit, the 7th day of March, 1944 came the Defendants, Vitagraph, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Motion for Directed Verdict At Close of All The Evidence in words and figures following, to-wit:

90 IN THE DISTRICT COURT OF THE UNITED STATES
(Caption—4525)

MOTION BY THE DEFENDANTS, VITAGRAPH, INC., WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, WARNER BROS. PICTURES, INC., AND WARNER BROS. THEATRES, INC., FOR DIRECTED VERDICT AT CLOSE OF ALL THE EVIDENCE.

Come now the defendants, Vitagraph, Inc., Warner Bros. Circuit Management Corporation, Warner Bros. Pictures, Inc., and Warner Bros. Theatres, Inc., by Defrees, Fiske, O'Brien & Thomson, their attorneys, at the close of all the evidence, and move the court that the jury be instructed to find said defendants and each of them not guilty. Said defendants set out the following specific grounds for said motion:

1. The evidence is insufficient to sustain a verdict of guilty as to said defendants or any of them.

2. The evidence is insufficient to sustain plaintiff's contention that any conspiracy, combination or monopoly existed.

91 3. The evidence fails to show that these defendants, or any of them, were parties to or participated in any conspiracy.

4. The evidence fails to show that these defendants, or any of them, did any unlawful act which resulted in injury or damage to the plaintiffs' business or to their property.

5. Uncontradicted evidence on behalf of these defendants constitutes and is a valid defense to the plaintiffs' claims against said defendants.

6. The evidence as to plaintiffs' damages is insufficient as a basis for the jury to determine the amount thereof, and any verdict for money damages against these defendants, or any of them, would necessarily be predicated upon guess, surmise, speculation and conjecture.

Vincent O'Brien,
Attorneys for Defendants, Vitagraph, Inc., Warner Bros. Circuit Management Corporation, Warner Bros. Pictures, Inc. and Warner Bros. Theatres, Inc.

92 And on the same day, to-wit, the 7th day of March, 1944, came the Defendants, RKO Radio Pictures, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Motion For Directed Verdict in words and figures following, to-wit:

93 IN THE UNITED STATES DISTRICT COURT

(Caption—4525)

MOTION FOR DIRECTED VERDICT.

Now come the defendants RKO Radio Pictures, Inc., Loew's, Incorporated and Twentieth Century-Fox Film Corporation, by Mayer, Meyer, Austrian & Platt, their attorneys, at the close of all of the evidence in the case, all parties having rested, and severally move that the Court direct the jury to find the issues herein against the plaintiffs and in favor of said defendants and each of them, and give to the jury the attached instruction, as follows:

"The jury are instructed to find the issues against the plaintiffs and in favor of each of the defendants RKO Radio Pictures, Inc., Loew's, Incorporated and Twentieth Century-Fox Film Corporation."

For specific grounds for their said several motions the said defendants say:

1. There is no evidence from which the jury could properly find that these defendants or any of them conspired in the manner charged in the plaintiffs' complaint.

2. There is no evidence from which a jury could properly find that plaintiffs have suffered injury to their property or business as a direct and proximate result of any act done by the defendants or any of them pursuant to the alleged conspiracy or conspiracies set forth in the plaintiffs' complaint.

3. The supposed evidence as to damages introduced by the plaintiffs is incompetent because it is speculative and conjectural as to the plaintiffs' claimed loss of profits.

4. The evidence shows that the plaintiffs are estopped to complain of the so-called "system of release" upon which they seek to base their recovery.

5. The evidence is insufficient in law to support a verdict against these defendants or any of them.

Mayer, Meyer, Austrian & Platt,
By Miles G. Seeley,
A member of said firm,
Attorneys for said Defendants.

94 The Jury are instructed to find the issues against the plaintiffs and in favor of each of the defendants RKO Radio Pictures, Inc., Loew's, Incorporated and Twentieth Century-Fox Film Corporation.

95 And the same day to wit, the 7th day of March, 1944 came the Defendants, Paramount Pictures, Inc. et al., by their attorneys and filed in the Clerk's office of said Court their certain Motion for Directed Verdict At Close of All of the Evidence in words and figures following, to wit:

96 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

MOTION OF DEFENDANTS, PARAMOUNT PICTURES INC. AND BALABAN & KATZ CORPORATION, FOR DIRECTED VERDICT AT CLOSE OF ALL OF THE EVIDENCE.

Now come the defendants Paramount Pictures Inc. and Balaban & Katz Corporation, by Edmund D. Adcock and Arthur A. Goldberg, their attorneys, at the close of all the evidence, offered and received herein, and move the court to direct a verdict in favor of said defendants, and each of them, and that the jury be instructed to find said defendants, and each of them, not guilty.

And as specific grounds for said motion, the said defendants show:

(1) Upon the facts and law, the plaintiffs have no right to relief.

(2) No facts have been proven from which the jury could reasonably find that any conspiracy, monopoly or monopolistic practices existed.

(3) The evidence offered and received on behalf of all defendants showing that no conspiracy existed, has not been controverted.

97 (4) No facts have been proven from which the jury could reasonably find that the defendants, or any of them, have restrained interstate trade or commerce unreasonably.

(5) The plaintiffs have not shown that these defendants,

or any of them, were parties to or participated or joined in any conspiracy or did any act pursuant to a conspiracy which caused or resulted in any injury or damage to the plaintiffs' business or to their property.

(6) The evidence is insufficient to show or establish the essential elements of plaintiffs' damage, if any, so that there is no basis on which the jury can measure such damage or damages in terms of money under applicable rules of law.

(a) The evidence received on behalf of plaintiffs with respect to alleged loss of profits in the operation of the Jackson Park Theatre is too conjectural, speculative and remote to form a basis for the assessment of damages.

(b) The evidence received on behalf of plaintiffs tending to show prospective profits of the Jackson Park Theatre based on a comparison with the business done by the Maryland Theatre is too conjectural and speculative, in that there is no evidence justifying the use of the Maryland Theatre as a basis of comparison with the Jackson Park Theatre.

Edmund D. Adcock,
Arthur A. Goldberg,
Attorneys for Defendants Paramount Pictures Inc. and Balaban and Katz Corporation.

March, 1944.

98 And afterwards, to wit, on the 7th day of March, 1944, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

99 In the District Court of the United States
(Caption—4525)

Tuesday, March 7, 1944.

Present: Honorable Michael L. Igoe, District Judge

This day this cause coming on for further trial again come the parties by their attorneys, and the Jury heretofore empanelled and sworn herein also come, and the trial of this cause proceeds.

At the close of all the evidence the defendants and each

of them move for a directed of Not Guilty and the Court having heard the arguments of counsel and being fully advised in the premises,

It Is Ordered that said motions be and they are hereby overruled and the hour of adjournment having arrived,

It Is Ordered that the Jury be and they are hereby permitted to separate until March 8, 1944 at 10:15 A. M.

100 And afterwards on, to wit, the 8th day of March, 1944 came the Defendants, Paramount Pictures Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Second Amendment to Their Answers in words and figures following, to wit:

101 In the District Court of the United States

* * (Caption—4525) * *

SECOND AMENDMENT TO ANSWERS OF PARAMOUNT PICTURES INC. AND BALABAN & KATZ CORPORATION, DEFENDANTS.

Now come the defendants Paramount Pictures Inc. and Balaban & Katz Corporation, by Edmund D. Adcock and Arthur A. Goldberg, their attorneys, and by leave of court first had and obtained amend their answers as amended by adding thereto the following:

Said defendants show that said plaintiffs knowingly and voluntarily participated in the alleged system of releasing motion pictures for exhibition in theatres in Chicago and its environs, of which complaint is made by plaintiffs, by licensing film giving to their theatre a run ahead of and clearances over other theatres in competition with plaintiffs' theatre and with minimum admission prices for the same and subsequent runs, and also sought in an arrangement with another exhibitor to induce and effect in conjunction with another exhibitor a change of run of plaintiffs' theatre and clearances in said complained of system of release changing and affecting runs, clearances and minimum admission prices of other theatres in competition with plaintiffs' theatre.

Plaintiffs are therefore in pari delicto and are 101½ thereby precluded and estopped to complain of the

alleged system of release with playing position, clearances and minimum admission prices and the alleged acts of defendants with respect to establishing, continuing and maintain said complained of system of release.

Paramount Pictures Inc.
Balaban & Katz Corporation,
By Edmund D. Adcock,
Arthur A. Goldberg,
Its Attorneys.

102 And afterwards on, to wit, the 10th day of March, 1944 there was filed in the Clerk's office of said Court a certain Verdict in words and figures following, to wit:

103 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—4525). * *

VERDICT.

We, the Jury, find the defendants guilty and assess the plaintiffs damages at the sum of $120,000.00 Dollars and ..... Cents.

Michael J. Gerard,
Foreman

Mrs. Edith M. Richardson,
Mrs. Margaret E. Johnson,
Richard A. Valles,
Mrs. Gertrude Foley,
Erick Dahlberg,
Mrs. Frances Lindo,
Mrs. Dorothy Williams,
Mrs. Zillia Dunn,
Mrs. Eyrl A. Jones,
Mrs. Irene I. Larson.

104 And on the same day to wit, on the 10th day of March, 1944, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

105 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—4525) * *

Friday, March 10, 1944

Present: Honorable Michael L. Igoe, District Judge.

This day again come the parties by their attorneys respectively, come also the Jury heretofore empanelled and sworn herein, and on their oath do say: "We, the Jury, find the defendants Guilty and assess the damages of the plaintiffs at the sum of One Hundred Twenty Thousand and no/100ths Dollars ($120,000.00) and

It Is Ordered that said verdict be filed and the Jury discharged and

It Is Considered and Ordered that the Plaintiffs Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom do have and recover of and from the defendants RKO Radio Pictures, Inc., a corporation, Loew's Incorporated, a corporation, Paramount Pictures, Inc., a corporation, Twentieth Century-Fox Film Corporation, a corporation, Vitagraph, Inc., a corporation, Balaban & Katz Corporation, a corporation, Warner Bros. Pictures, Inc., a corporation, Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation, their said damages in the sum of One Hundred Twenty Thousand and no 100ths Dollars ($120,000.00) in form as aforesaid by the Jury assessed together with their costs and charges in this behalf expended.

106 And afterwards, to wit, on the 14th day of March, 1944, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

107 IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—4525)

Tuesday, March 14, 1944

Present: Honorable Michael L. Igoe, District Judge

The Court being duly advised in the premises, on agreement of the parties by their attorneys now made in open Court, It Is Ordered that the Judgment heretofore entered herein on March 10, 1944 be and it is hereby vacated and set aside and

It Is Considered and Ordered by the Court that the plaintiffs Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom do have and recover of and from the defendants RKO Radio Pictures, Inc., a corporation, Loew's, Incorporated, a corporation, Paramount Pictures, Inc., a corporation, Twentieth Century-Fox Film Corporation, a corporation, Vitagraph, Inc., a corporation, Balaban & Katz Corporation, a corporation, Warner Bros. Pictures, Inc., a corporation, Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation, their damages in the sum of Three Hundred Sixty Thousand and no/100ths Dollars ($360,000.00) and their costs and charges in this behalf expended

It Is Further Ordered that the defendants be and they are hereby given ten (10) days from this date within which to file motion for a new trial, motion for Judgment notwithstanding the verdict, or any other motions and given ten (10) days thereafter within which to file brief in support of said motion or motions

It Is Further Ordered that the plaintiffs be and they are hereby given ten (10) days thereafter within which to file briefs in opposition to said motions and given five (5) days thereafter within which to file reply briefs.

It Is Further Ordered that hearing on all motions pending and on the application of plaintiffs for an injunction herein be and it is hereby set for April 21, 1944 at 2:00 P. M.

108 And afterwards on, to wit, the 24th day of March, 1944, came the Defendants, RKO Radio Pictures, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Motion For Judgment Notwithstanding The Verdict Of The Jury And, In The Alternative For A New Trial in words and figures following, to wit:

109 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—4525) * *

MOTION OF DEFENDANTS, RKO RADIO PICTURES, INC., LOEW'S, INCORPORATED, PARAMOUNT PICTURES, INC., TWENTIETH CENTURY-FOX FILM CORPORATION, BALABAN & KATZ CORPORATION, VITAGRAPH, INC., WARNER BROS. PICTURES, INC., WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, AND WARNER BROS. THEATRES, INC., FOR JUDGMENT NOTWITHSTANDING THE VERDICT OF THE JURY AND, IN THE ALTERNATIVE, FOR A NEW TRIAL.

Now come the defendants, RKO Radio Pictures Inc., Loew's, Incorporated, Paramount Pictures, Inc., Twentieth Century-Fox Film Corporation, Vitagraph, Inc., Balaban & Katz Corporation, Warner Bros. Pictures, Inc., 110 Warner Bros. Circuit Management Corporation, and Warner Bros. Theatres, Inc., and move that the jury's verdict filed herein March 10, 1944 and the judgment rendered and entered thereon March 14, 1944 be set aside and that judgment be entered herein for said defendants notwithstanding the verdict and, in the alternative, move for a new trial; and in support of their said motion for judgment notwithstanding the verdict they say:

1. The court erred in denying the motion of these defendants made at the conclusion of the plaintiffs' case to direct the jury to return its verdict in favor of these defendants.

2. The court erred in denying the motion of these defendants made at the close of all of the evidence in said cause to direct the jury to return its verdict in favor of these defendants.

3. The evidence offered and received in behalf of the

plaintiffs herein, most favorably considered, did not and does not support the verdict of the jury entered herein in favor of the plaintiffs and against these defendants.

4. The evidence offered and received in behalf of these defendants warranted a directed verdict in favor of these defendants at the close of all the evidence.

5. Said defendants maintained the burden of proof resting upon them as a matter of law of establishing their affirmative defenses set up by them in their answer and amendments thereto.

6. The court erred in giving certain instructions to the jury over the objections of these defendants and as requested by the plaintiffs, which instructions had the effect of depriving these defendants of certain of their defenses or the effect of directing the jury to find the issues for the plaintiffs.

111 Such instructions and the reasons for which they were, respectively, erroneous are as follows:

(a) "The court instructs the jury that if you find that there was a conspiracy to fix minimum admission prices, then the fact that there were business reasons which made such fixing of admission prices desirable to those defendants which you find to have participated therein, if you so find, or the fact that for other reasons the arrangements might be deemed to have desirable consequences, would be no legal justification for such fixing of prices. And if you further find that the so-called Chicago System of Release is an inseparable part of a price fixing scheme between the defendants, or some of them, then the contracts and clearance schedules incorporating the same therein are invalid and illegal and the plaintiffs are entitled to recover for any damages proximately caused thereby."

The said instruction was erroneous for the following reasons:

(1) No purported conspiracy to fix minimum admission prices is within the issues in this case as made by the pleadings of the parties.

(2) The evidence conclusively shows that the plaintiffs were not injured in their business or property by any fixing of minimum admission prices and therefore, as a matter of law, were not entitled to have the claimed illegality of any supposed fixing of minimum admission prices submitted to the jury.

(3) The instruction was prejudicial to the defendants.

because it tended to confuse the jury as to the issues which they were to decide and to deprive the defendants of their right to have the jury consider the reasonableness of the so-called Chicago System of Release as it affected the plaintiffs' business, under clear and applicable instructions as to the law.

(4) The fact that the so-called Chicago Release System might or might not have been a part of a conspiracy to fix minimum admission prices was irrelevant to the 112 question whether said so-called Chicago Release System if and of itself was an unreasonable restraint of trade as it affected the plaintiffs' business.

(5) The said instruction directed the jury to find for the plaintiffs in complete disregard of the defense of estoppel pleaded by them and in that respect was inconsistent with and contradictory to the instruction given by the court with respect to such defense of estoppel.

(b) "The court instructs the jury that the owner of a copyright product may not by virtue of his copyright condition his license so as to tie to the use of the copyright product the use of other products which lie outside of the monopoly of the copyright license, or condition the license so as to control conduct by the licensee not embraced in the copyright monopoly or upon the maintenance of minimum admission prices which the public shall pay for an entertainment which includes theatres other than the particular picture licensed."

Said instruction was erroneous for the following reasons:

(1) There was no evidence that any license under copyright granted by any defendant in this case was conditioned so as to tie to the use of the copyrighted films which were the subject matter of such license the use of any other product.

(2) There was no evidence that any license under copyright granted by any defendant in this case was conditioned so as to control conduct by the licensee not embraced in the copyright monopoly.

(3) There is no evidence in this case that any license under the copyright granted by any defendant in this case was conditioned upon the maintenance of minimum admission prices which the public should pay for an entertainment which included features other than the particular picture licensed.

(4) The owner of a copyrighted film is not deprived
113 of its right to specify in any license to exhibit such film the minimum admission prices to be charged at such exhibition by the fact that the exhibitor or licensee may choose, without agreement with or compulsion by the licensor, to exhibit said film as part of a program including other entertainment.

(5) The fixing of minimum admission prices was not a proper issue to be presented to the jury for the reasons set forth in sub-paragraphs 1, 2, and 3 of paragraph (a) hereof, supra.

(c) "You are also instructed that if you find that the plaintiffs had merely bought film from the defendants under contracts because of a business necessity and that the plaintiffs had not with a knowledge of the defendants' purpose to monopolize helped to build up a monopoly, then the plaintiffs are not estopped to complain against the defendants."

The said instruction is erroneous for the following reasons:

(1) The fact that the plaintiffs might have bought or licensed film from the defendants because of business necessity would not excuse their having obtained in connection therewith, by provisions in their license agreements, priority of run and clearance over competing theatres, and being thereby estopped to complain that priority and clearance over their theatre were provided for in the film license agreements of the defendant exhibitors.

(2) Whether or not the plaintiffs had knowledge of the defendants' purpose is immaterial, since the plaintiffs must be charged with knowledge of the necessary effect of priorities of runs and clearances obtained by them over competing theatres, which necessary effect was to create a monopoly in the plaintiffs' theatre.

(3) The uncontradicted evidence shows, in addition to the facts shown in paragraphs (1) and (2) immediately above, that the plaintiffs insisted that the Hamilton Theatre be moved back behind the run in which the
114 Jackson Park Theatre was licensed to exhibit pictures and that said request was complied with by all of the distributors, including the defendant distributors.

(4) The evidence shows that the plaintiffs purchased the Jackson Park Theatre with the knowledge of the posi-

tion in which it had been licensed to play and with the knowledge of the fact that it was licensing pictures under the same system claimed by the plaintiffs to be illegal.

(5) The said instruction deprived the defendants of the right to a fair consideration by the jury of the issue of estoppel of the plaintiffs to complain of the so-called Chicago System of Release.

(d) "The court further instructs the jury that if you find a price fixing combination to exist between the defendants, or some of them, then the fact, if you find it to be a fact, that the prices so fixed were reasonable does not make such fixing of prices lawful."

Said instruction was erroneous for the several reasons stated in sub-paragraph 1, 2, and 3 in paragraph (a) hereof, supra.

(e) "The court instructs the jury that if you find from the evidence in this case a combination or conspiracy to monopolize or unreasonably restrain the competition in the licensing or exhibition of motion pictures, or if you find a combination or conspiracy to fix minimum admission prices in theatres exhibiting motion pictures licensed by the defendants, or some of them, and if you further find that as a proximate result of any such combination or conspiracy the plaintiffs are damaged, then in such case your verdict will be for the plaintiffs."

Said instruction was erroneous for all of the reasons stated in sub-paragraphs 1, 2, and 3 of paragraph (a) hereof, supra.

(f) "The court instructs the jury that if they find that the defendants or some of them have entered into a 115 combination to fix admission prices and that, as an integral part thereof, runs and clearances are set up for the exhibiting of motion pictures under a so-called System of Release; and that as a result thereof the plaintiffs are unable to obtain motion pictures for exhibition in their theatre until after such pictures have been shown by the competitive theatres owned by Warner Bros. Theatres, Inc., or by Balaban & Katz Corporation, and that as a proximate result thereof the plaintiffs are damaged, then your verdict shall be for the plaintiffs even though the plaintiffs did not attempt to exhibit motion pictures at prices less than the minimum admission prices fixed in plaintiffs' contract with the defendant distributors."

The said instruction was erroneous for all of the reasons set forth in paragraph (a) hereof, supra.

(g) "The court instructs the jury that only in the event that you find that there exists no conspiracy or combination to fix minimum admission prices, or no unreasonable restraint of trade by the defendants by virtue of a Chicago System of Release, will you have occasion to consider whether or not the plaintiffs demanded and sought to obtain a playing position in 'C' week."

The said instruction was erroneous for all of the reasons set forth in paragraph (a) hereof, supra, and for the further reason that the defendants had a right to have the jury consider whether or not the plaintiffs demanded and sought to obtain a playing position in "C"' week in passing on the issue as to whether or not the so-called Chicago System of Release was an unreasonable restraint of trade and also upon the issue as to whether or not the plaintiffs suffered any injury to their business or property by reason thereof.

The several above quoted instructions given by the court wherein reference is made to the supposed fixing of minimum admission prices were not only each erroneous 116 for the reasons stated above, but when considered together were additionally erroneous and prejudicial to the defendants because of the undue emphasis and repetition on the subject of minimum admission prices, although such subject was not properly in issue in the case.

Had said instructions above set forth not been given, the only possible verdict under the evidence would have been a verdict in favor of said defendants.

7. The plaintiffs failed to prove any injury to them or to the Jackson Park Theatre by reason of any of the said several matters complained of in their complaint.

8. The plaintiffs failed to offer any evidence to show what the operating performance of the Jackson Park Theatre would have been without the system complained of or in free and open competition.

9. The testimony given by plaintiffs' witnesses, Richard Salkin and A. B. Butler was inadmissible as too remote and speculative.

10. Their evidence in so far as it related to earnings which in their opinion would have resulted had the Jackson Park Theatre operated in "C"' week is subject to the further objection that operation in "C"' week would have

been within the same system as the plaintiffs complain of as the illegal result of a conspiracy.

11. Any testimony as to damages based upon the remaining theory relied upon by the plaintiffs was inadmissible because there is no proof whatsoever that any event transpired subsequent to plaintiffs' acquisition of the Jackson Park Theatre as the result of or pursuant to any conspiracy or other illegal act such as might have caused the drop in profits shown by the record. On the contrary the undisputed evidence affirmatively shows that there was a corresponding decrease in the revenue of theatres in competition with the Jackson Park Theatre and that such
117 decrease was due in part to the loss of bank night and also to economic conditions.

12. There is no competent evidence of damage and without proof of damage only the government in a proper case, and not the plaintiffs, may successfully maintain an action.

13. The evidence is insufficient to sustain a verdict of guilty as to said defendants or any of them.

14. The evidence is insufficient to sustain plaintiffs' contention that any conspiracy, combination, or monopoly existed.

15. The evidence fails to show that these defendants or any of them did any unlawful act which resulted in injury or damage to the plaintiffs' business or to their property.

16. The verdict of the jury is clearly the result of passion and prejudice and is not the result of a calm and dispassionate consideration of all of the evidence submitted to the jury.

17. The verdict is grossly excessive.

18. One of the instructions given by the court to the jury relates to the plaintiffs' two theories of the measure of damages. A copy of said instruction is appended hereto and made a part hereof as Exhibit F.

Plaintiffs' Exhibit 48 sets forth the amount of damages as shown by plaintiffs' evidence based upon the two different theories. According to Theory Number (1) as stated in said instruction, the total amount claimed by the plaintiffs under said exhibit (plaintiffs' Exhibit 48) is $115,982.34. Under Theory Number (2), as stated in said instruction, the total amount claimed by the plaintiffs under said exhibit is $125,659.99. After reciting the said two

theories of damages, the said instruction directs that
118 if the jury finds from a preponderance of all the evidence that plaintiffs have been injured by the alleged acts of defendants, they must choose one or the other of said two theories of determining damage or the amount of damages.

The jury's verdict assessed the plaintiffs' damages at $120,000. The jury therefore by their verdict, in assessing more than the plaintiffs claimed by plaintiffs' Exhibit 48 under Theory of Damages numbered (1) in said instruction, chose to determine damages or the amount of damages upon Theory numbered (2) as stated in said instruction. Having chosen Theory numbered (2) of determining damages, the jury were required to follow the instruction with reference to determining the amount of damages, if any. They were directed, therefore, to first find what, if any, portion of the yearly average profits of the operation of the Jackson Park Theatre for the four year period prior to July 28, 1937 was derived from operation under conditions of free and open competition and not from operation in the playing position under the clearances and minimum admission prices of the so-called system of release and under double feature policies which plaintiffs allege and claim defendants by conspiracy established, maintained, and continued.

There was no evidence offered or before the jury from which they could determine the yearly average profits of the Jackson Park Theatre for said four year period prior to July 28, 1937 under conditions of free and open competition and not from operation under the conditions complained of by plaintiffs. Therefore, the jury could not have used any factor from which they could determine the damages claimed by plaintiffs for the five years involved in this suit, and the verdict returned by the jury could only have been based upon speculation and conjecture.

119 Motion For New Trial.

In support of their said motion for a new trial, the defendants say:

1. A certain document, which during the trial of this cause was marked by plaintiffs' counsel as Plaintiffs' Exhibit 123 for identification and was offered in evidence by said counsel, but which upon objections by counsel for

defendants was not admitted in evidence by the court, was given to the jury and was present in the jury room while the jury were deliberating upon their verdict and was seen and considered by the jury. The said Plaintiffs' Exhibit 123 for identification and the fact that said document was seen and considered by the jury in the course of their deliberations upon a verdict was prejudicial to the defendants and each of them in that the same was irrelevant and immaterial to any issues in this cause and in that said document, comprising a list of about 1500 theatres in all parts of the United States in the operation of which the defendant, Paramount Pictures, Inc., or subsidiaries thereof, had an interest, might have led the jury to believe, in the absence of any evidence explanatory thereof, that the said Paramount Pictures, Inc., and its subsidiaries had such buying power that it might have dictated to the defendant distributors of motion picture films with respect to the terms and conditions upon which such films should be licensed by such distributors for exhibition in said theatres, including theatres operated by the defendant, Balaban & Katz Corporation, in the City of Chicago, and in that, by reason of the refusal of the court to admit said document in evidence, the defendants did not offer evidence to negative any adverse inference which the jury might draw therefrom.

In support of this portion of their said motion for a new trial defendants attach hereto, and make a part hereof as Exhibits A, B, C, D, and E respectively, the affidavits of Vincent O'Brien, Arthur Goldberg, Edmund D. Adcock, and Miles G. Seeley, respectively, attorneys for certain of the defendants to the above entitled cause, including a copy of said Plaintiffs' Exhibit 123 for identification attached as Exhibit A to the said affidavit of Miles G. Seeley, and the affidavit of John Clifford, Deputy Marshal of this court.

Defendants further say that the said Vincent O'Brien, attorney for certain of said defendants, was informed by Richard A. Valles, one of the jurors in this cause, that said Plaintiffs' Exhibit 123 for identification was present in said jury room during the deliberations of said jury, and was seen and considered by the said jury; that the said Vincent O'Brien attempted to obtain from the said juror an affidavit so stating, but that the said juror declined to execute such affidavit; that, therefore, the de-

fendants desire and intend to subpoena one or more of the said jurors to attend upon any hearing of their said motion for new trial and to testify under oath with respect to the presence of said Plaintiffs' Exhibit 123 for identification in the jury room and with respect to the fact that said exhibit was seen and considered by the said jury.

2. As further grounds for and in support of said motion for new trial the defendants hereby reiterate the matters hereinabove contained in paragraphs 1 to 18 of the foregoing motion for judgment notwithstanding the verdict of the jury.

3. And as additional grounds the defendants aver the following, to wit:

The court erred in its rulings on the admissibility of evidence on behalf of the plaintiffs and in denying certain motions made by the defendants, objections to which rulings on evidence and to which rulings on said motions were made and are now reasserted as follows:

Rec. 57-58*—John E. Bloom

The following question was objected to and objection overruled:

"Q. Have you been ready and willing and able at all times during your ownership of this theatre to pay an additional film rental for a prior run?"

The witness had testified that he was ready, willing and able to pay additional film rental for a prior run.

Then he testified that that was discussed with Salkin. The following question was asked, to which objection was made and objection overruled:

"Q. And did you tell Mr. Calkin that?"

Rec. 82.—Florence B. Bigelow

She testified that she was willing to pay $150,000 a year for film if she could have C run or prior run for the Jackson Park and that she was willing to pay that now, if she were given a chance to get that run.

On objection, the testimony was allowed to stand subject to plaintiff connecting it up.

Rec. 121-122—Richard Salkin

Over objection, witness was allowed to answer that a picture has more box office value as a clear picture.

*The record reference is to the transcript of the proceedings as prepared by Mr. Eulass.

Rec. 186—Richard Salkin—Direct

Over objection, the following question was allowed and the witness answered as follows:

"Q. Now, Mr. Salkin, with those figures in mind, were you, as manager of this theatre and acting for the four plaintiffs in this case, ready, able and willing in all those years that you have mentioned to pay more rental for pictures in that same run, in that C run, for the Jackson Park?

The Witness: Yes, sir."

122 Rec. 290-301—Richard Salkin

The Court (301), after argument, indicated that he would permit the question put to the witness as to whether if Jackson Park during the five year period in question had played pictures in C week, the Jackson Park's gross admissions would have been as much as the gross admissions of Maryland for that period.

Rec. 330-331—Richard Salkin

The question that was before the court on argument and referred to at pages 300 and 301 was re-put by McConnell on further direct examination, and the question and answer were as follows, and the following took place between counsel:

(330) "Q. Now, this covers the period from July 28, 1937, to July 28, 1942. If, during that period, you had been able to obtain a C run for the Jackson Park Theatre, would you, or would the Jackson Park Theatre, rather, have been able to have obtained as much admission as is shown in the Maryland Theatre's figures during that same period of time?

A. Yes, sir.

Mr. Seeley: I take it there is no point repeating the objection.

The Court: No. It is understood that all the objections made yesterday, both in the presence of the jury and outside the presence of the jury, are now repeated.

Mr. O'Brien: And those of this morning.

The Court: Yes, sir.

(331) Mr. McConnell: Q. Have you the question in mind now?

The Witness: A. Yes, sir.

Q. Will you answer the question?

A. Yes, sir."

Rec. 338-339—Richard Salkin—Cross

The following question was put on cross-examination:

(338) "Q. And do you think it is a reasonable
23 assumption that, under conditions of free and open competition, those theatres would be charging the same admission prices that they are charging today?"

An answer was made which was stricken.

Then the following answer was given to the question:

"The Witness: Well, I have no way to judge what admission price they would charge. I know what they are charging for the run that they are in and that is the run I asked for."

Mr. Seeley's motion to strike the answer was denied (R. 339).

Rec. 363—Richard Salkin

Mr. Seeley's motion overruled to strike the answer of "Yes" to the question as to whether the Jackson Park gross receipts during the five year period would have been as much as Maryland if Jackson Park had played in C week during the five years in question, in view of the fact that the cross-examination of Mr. Salkin by Mr. Seeley with respect to the answer of the witness to said question showed that his answer could have been only speculative and conjectural.

Rec. 397—Richard Salkin—Redirect

To the witness Salkin on redirect there was put the following question, and he made the following answer;

"Q. Well, now, isn't it a fact that under the system of buying pictures at that time, the mere fact that for any particular picture or any particular group of pictures the theatres might have played out of their customary order would not definitely define a playing position?

A. No. Any theatre had a right to buy, and it is possible that the Jackson Park did not want the pictures at the time, and they felt that they did not need them, and the Kimbark or the other theatres had bought their pictures,
but anything the Jackson Park wanted to buy, with the
24 seating capacity, they could have gone out and bid for them and bought them; must have been that the Jackson Park at that time did not want to buy pictures."

The court then overruled the motion of Mr. Seeley that those portions of the answer which comprised his statement as to what might have been the reason for something the Jackson Park did, be stricken.

Rec. 447-449—Leo Salkin—Direct

Witness had testified that his employer, William Morris Theatrical Agency, did a large business—a couple hundred thousand dollars a year—with Balaban & Katz Corporation, and that B & K was a valued client and customer of the Morris Company.

He was then asked the following question:

(447) "Q. Does that affect the question of whether or not you are a willing witness in this case?"

Then over objection Mr. McConnell was allowed to state (Rec. 448-449) and to cross-examine the witness on McConnell's statement that he knew Salkin was an unwilling witness.

Rec. 458—Leo Salkin—Direct

The question was put:

"Q. Can you tell us briefly what sort of theatres the Granada and the Marbro Theatres were?"

Over objection he was allowed to answer the question (462), his answer being to the effect that they were two modern theatres on a par with any of the finer theatres that were built at that particular time.

Rec. 463—Leo Salkin—Direct

Over objection, witness was asked as to conversation in September, 1926 with Neil Agnew regarding obtaining pictures for the Marbro Theatre and (464) objection to similar line of questions to stand without further objection.

125 Rec. 477-478—Leo Salkin—Direct

Over objection the witness was allowed to state in response to a question as to what happened to the Marbro and Granada Theatre, that they were purchased by B & K.

Rec. 536-554

Motion to strike the evidence of Leo Salkin given from an affidavit that he made on July 9, 1928 relating to conversations that he had in 1926 and 1927 with certain representatives of Paramount, Fox, and Metro-Goldwyn-Mayer.

Overruled (Rec. 554).

Rec. 722-750—Butler—Direct

Witness Butler had been asked the question as to what the profits of Jackson Park were during the years 1933, 1934, 1935 and 1936.

Objection was made to such question on the ground that the purpose of the question was to prove the profits for those years in order to compare them with the profits ob-

tained by the plaintiffs from the operation of the theatre in the years after plaintiff took over and thus estimate damages which were suffered by the alleged conspiracy.

This objection after considerable argument was overruled by the court and the witness, over objection, was allowed to testify along that line.

Rec. 760—Butler

Plaintiffs' Exhibit 49 was received in evidence over objection theretofore made upon the argument on the objection to the original question put to the witness Butler as to what the profits were for the years 1933 to 1936, both inclusive.

Rec. 480

Plaintiffs' Exhibits 47 and 48 received in evidence over objection of defendants and on condition that compliance should be made with certain objections, namely, that the legends on the exhibits should be changed and that 126 certain books be made available for inspection.

Rec. 1839—Shirley

Objection of McConnell sustained to the following question:

"Q. Is it or is it not true in your experience that that so-called system is the result of many separate license agreements?"

Rec. 2132

Motion of defendants to require plaintiffs to elect on which theory of damage they rely, overruled.

Rec. 2381; Rec. 2383-2384

Motion to strike all the evidence of plaintiffs with respect to damages and particularly Plaintiffs' Exhibits 47, 48, and 49, made by counsel for B & K and Paramount, joined in by other defendants, overruled (Rec. 2381); Motion that plaintiffs be required to elect on which theory of damages they rely, renewed and joined in by all defendants and overruled (Rec. 2383-2384).

4. The court erred in sustaining certain objections of the plaintiffs to certain evidence offered in behalf of the defendants upon the trial of this case, which evidence was competent and relevant and highly material to the issues in said cause.

5. The court erred in failing to sustain the objections of these defendants to certain evidence offered and received in behalf of the plaintiffs, which evidence was in-

competent, irrelevant, and highly prejudicial and inflammatory.

6. The verdict of the jury is not supported by the evidence in this case.

7. The verdict of the jury is against the preponderance or the greater weight of the evidence on the issues submitted to the jury.

8. The verdict of the jury is clearly the result of
127 passion and prejudice and the reception in evidence of matters highly prejudicial and inflammatory offered and received in behalf of the plaintiffs and is not the result of the calm and dispassionate consideration of the evidence on the part of the jury.

9. The verdict of the jury is grossly excessive.

Wherefore, the defendants, RKO Radio Pictures, Inc., Loew's Incorporated, Paramount Pictures, Inc., Twentieth Century-Fox Film Corporation, Balaban & Katz Corporation, Vitagraph, Inc., Warner Bros. Pictures, Inc., Warner Bros. Circuit Management Corporation, and Warner Bros. Theatres, Inc., move that the jury's verdict filed herein March 10, 1944 and the judgment rendered and entered herein March 14, 1944 be set aside and that judgment be entered herein for said defendants notwithstanding the verdict and, in the alternative, that a new trial be granted to all and each of the said defendants.

Balaban & Katz Corporation,
Paramount Pictures, Inc.,
By Edmund D. Adcock,
Their Attorney.

RKO Radio Pictures, Inc.,
Loew's, Incorporated,
Twentieth Century-Fox Film Corporation,
By Mayer, Meyer, Austrian & Platt,
By Miles G. Seeley,
Their Attorneys.

Vitagraph, Inc.,
Warner Bros. Pictures, Inc.,
Warner Bros. Circuit Management Corporation,
Warner Bros. Theatres, Inc.,
By Defrees, Fiske, O'Brien and Thompson,
Their Attorneys.

128 EXHIBIT A.

IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—4525) • •

State of Illinois, } ss.
County of Cook. }

Vincent O'Brien, being first duly sworn, upon oath deposes and says that he is an attorney at law duly licensed to practice in the State of Illinois and admitted to practice in this court; that he is a member of the firm of Defrees, Fiske, O'Brien & Thomson with offices at 105 South La Sale Street, Chicago, Illinois, and is attorney of record in the above entitled cause for certain of the defendants whom he represented at the trial of said cause before the Honorable Michael L. Igoe and a jury impaneled to try the issues from February 14, 1944 to March 9, 1944.

He avers that on March 9, 1944, immediately after the court had charged the jury and had sworn the mar-
129 shals to take custody of the jury, affiant delivered to the Marshal Clifford all of the exhibits which had been offered and received in evidence on behalf of the clients represented by affiant which had been, respectively, marked Warner Exhibits 4 to 31, inclusive, and that affiant did not then or at any other time deliver to said marshal or to anyone else any other papers for transmission to the jury room; that thereupon said marshal took the Exhibits so delivered into the jury room and the jury retired to deliberate.

Affiant further says that he thereupon left the court house and did not return thereto until shortly before 10:00 o'clock in the forenoon on the following day, March 10, 1944, at which time and before the court took the bench affiant inquired of Marshal Clifford as to where the said Warner Exhibits might be procured, and was led by the marshal to his desk in the courtroom immediately adjacent to the entrance to the court's chambers, where he gathered up his said Exhibits, Warner's 4 to 41, inclusive, which were for the most part intact within one group, and that at that time he did not observe with particularity any of the Exhibits of the other parties except to note that there were a great many exhibits. The marshal remained

with affiant from the time he went to said desk until affiant had gathered up his Exhibits and departed therefrom, and admonished affiant that the court would convene momentarily. Affiant experienced no difficulty or delay in procuring the said Warner Exhibits, and was able to assemble them before the Judge did take the bench.

Affiant further says that he remained to hear the verdict read and left the courthouse and did not return thereto until Tuesday morning, March 14, 1944, just before the court took the bench.

On Monday, March 13, 1944, Miles G. Seeley, attorney for certain of the defendants, had advised affiant by telephone that in going through the Exhibits to collect those offered on behalf of his clients he had found amongst the Exhibits which had been taken from the jury room and deposited on the bailiff's desk a document marked Plaintiffs' Exhibit 123, for identification, which had been offered in evidence on the trial but which the court had refused to admit into evidence.

Affiant further avers that after disposition of the motion in the case before the court on Tuesday morning, March 14, 1944, affiant, together with Mr. Seeley, inquired of Marshal Clifford and of the minute clerk as to who had the said Exhibit 123, for identification, and was informed by each of them that it was in the custody of Judge Igoe's minute clerk. Affiant desired to examine the remaining Exhibits to see if any other Exhibits offered by the plaintiffs, but not admitted into evidence, were contained amongst those which had been returned from the jury-room to the bailiff's desk, having in mind particularly Exhibit 123a for identification, which had likewise been offered and rejected. Accordingly, affiant requested the marshal if he might examine the Exhibits for that purpose, and was permitted to do so in the court's chambers in the presence of Mr. Seeley and Marshal Clifford, there being a case then on argument to a jury in the courtroom itself. Affiant examined said Exhibits but did not find Plaintiffs' Exhibit 123a for identification amongst them, and accordingly left the Exhibits on the table in the Judge's chambers, the marshal representing that he would take them back to the courtroom later. Thereupon affiant left the building and did not return thereto for any purpose since.

Affiant further says that at no time during or after the trial did he have possession, temporarily or otherwise, of

Plaintiffs' Exhibit marked 123 for identification, nor has he even observed said Exhibit under any circumstances since the time that plaintiffs' counsel had it marked 131 by his court reporter and offered it in evidence. As far as affiant knows and believes, said Exhibit, for identification, was in the possession of plaintiffs' counsel at all times throughout the trial and affiant avers that he had no knowledge or information of any kind that said Exhibit was to be, or had been sent, to the jury room until Mr. Seeley informed him that it was amongst the Exhibits returned from the jury room, as he did on March 14, 1944 as above stated.

Affiant further avers that thereafter he determined to interview personally as many of the jurors as might be necessary definitely to determine the fact as to whether Plaintiffs' said Exhibit 123 for identification was in the jury room during the deliberations of the jury, and that accordingly on Wednesday, the 15th day of March, 1944, he decided, after examining the list of the jurors and checking their addresses, to interview the juror, Richard A. Valles, whose address was given as 703 West 62nd Street, Chicago, Illinois, according to the list, that juror being within taxicab range of affiant's office.

Affiant further avers that without communicating in any way in advance with Mr. Valles affiant took a Checker cab to that address, expecting to find a photography shop there, but instead found it to be his place of residence. Not anticipating that he would be at home, it then being about 11:00 o'clock A. M., affiant asked the cab driver to wait, and rang the bell and found that Mr. Valles was at home and that he would talk to affiant.

Affiant did not ask Mr. Valles any question concerning the said Plaintiffs' Exhibit 123 for identification, but rather asked him why he considered that the defendants were guilty, and thereupon Mr. Valles assigned certain reasons and then stated that he and the other jurors, who examined the Exhibits carefully, were surprised to find amongst them an exhibit showing the theatres owned by Paramount Pictures, Inc., in different places in the United States—
132 surprised, he said, because there had been no testimony to that effect; and Mr. Valles informed affiant that the contents of that Exhibit were made known to him and to the jury at large when it was discovered amongst the

Exhibits during their deliberations. Affiant further avers that Mr. Valles referred to that document and to its discovery amongst the Exhibits as a "thunder bolt," that being the word used by Mr. Valles.

Affiant further avers that after further discussion with Mr. Valles affiant departed without informing him that said Plaintiffs' Exhibit 123 for identification should not have gone to the jury room and without attempting then to obtain from said juror any written statement or affidavit as the fact of the presence in the jury room during the jury's deliberation of said Plaintiffs' Exhibit 123 for identification, having in mind at the time that affiant might have occasion to subpoena Mr. Valles to testify to that fact at the time of the hearing of any motion for new trial.

Affiant further avers that thereafter he determined, if possible, to procure from Mr. Valles an affidavit as to that fact and that he prepared such affidavit and asked one of his associates to present it to Mr. Valles for execution; that Mr. Valles indicated that he desired not to execute any statement or affidavit but theretofore said that if he were called to court he would testify to the full truth as to this and any other matters concerning which the court might permit him to be interrogated.

Affiant further says that in view of Mr. Valles' statement as to the fact of the presence of said Exhibit in the jury room and as to the fact that its contents were made known to the jury at large, affiant perceived no need thereafter to interview the other jurors, many of whom reside outside of Chicago, for he is convinced that under those circumstances the other jurors, as well as Mr.
133 Valles, will testify to the true facts should their testimony be required.

Affiant further avers that on Sunday, March 12, 1944, he together with his daughter called upon Mrs. Richardson, one of the jurors in the case, at her home in Beverly Hills, Chicago, Illinois, and interviewed her in the presence of her husband to satisfy as far as possible his curiosity, but that Mrs. Richardson did not discuss the case in any detail and seemed to doubt that it was entirely proper for her to do so, and she made no mention of any particular Exhibit, except she did say that she and the other jurors spent a great deal of time in examining the various Exhibits. Inasmuch as she did not mention Plaintiffs' Exhibit 123 for

identification and inasmuch as affiant knew nothing at that time about its having been in the jury room, the subject did not come up at all.

Vincent O'Brien.

Subscribed and sworn to before me this 24th day of March, 1944.

Kirsten Sorensen,
(Seal) *Notary Public.*

134 EXHIBIT B.

In the District Court of the United States.

* * (Caption—4525) * *

State of Illinois, } ss.
County of Cook. }

Arthur A. Goldberg, being first duly sworn, on oath deposes and says that he is an attorney at law with offices at 175 North State St., Chicago, Illinois, and that he is one of the attorneys of record for the defendants Balaban & Katz Corporation and Paramount Pictures, Inc., that Edmund D. Adcock, also an attorney at law, was one of the attorneys of record and was associated with affiant in the trial of said cause; that affiant will be inducted into the armed services of the United States at 9 o'clock on Wednesday, March 22, 1944, affiant having passed the required physical examination.

Affiant further states:

1. With respect to the document marked "Plaintiffs' Exhibit 123 for identification," affiant states that he assisted Edmund D. Adcock in the preparation of same; that he never saw the said document after it was prepared until about 1:45 P. M. on Monday, March 13, 1944, when he went
135 to the courtroom of Judge Igoe in the United States Courthouse to obtain the exhibits offered and received in evidence on behalf of Paramount Pictures, Inc. and Balaban & Katz Corporation which had been given to the bailiff after the court had instructed the jury on Thursday, March 9, 1944; that upon arriving at the courtroom of Judge Igoe, he saw the bailiff and stated that he wanted to get the defendants' Paramount Pictures, Inc. and Balaban & Katz Corporation exhibits; that he then went with

the bailiff to the bailiff's table back of the jury box where a number of exhibits in the case were lying and which affiant understood were the exhibits which had been given to the jury and returned to the bailiff; that affiant then in looking for the exhibits of the defendants Paramount Pictures, Inc. and Balaban & Katz Corporation, saw but did not examine the said document marked "Plaintiffs' Exhibit 123 for identification." Affiant further states that he has not seen the said document so marked since said date.

Arthur A. Goldberg.

Subscribed and sworn to before me this 20th day of March, A. D. 1944.

Bessie C. Breyer,
Notary Public.

(Seal)

136 EXHIBIT C.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

State of Illinois, } ss.
County of Cook. }

Edmund D. Adcock, being first duly sworn, on oath states that he is an attorney at law with offices at 134 South LaSalle St., Chicago, Illinois, and that he is one of the attorneys of record for the defendants Balaban & Katz Corporation and Paramount Pictures Inc.; that Arthur A. Goldberg, also an attorney at law, was one of the attorneys of record and was associated with affiant in the trial of said cause; and further affiant states:

1. During the trial and when plantiffs were putting in their evidence in chief, plaintiffs' attorney had marked a document for identification as "Plaintiffs' Exhibit 123 for identification" and offered the same in evidence; upon objections by defendants' attorneys and argument on such objections by counsel for plaintiffs as well as counsel for defendants, the said document was not received in evidence.

The said document is a document that was prepared
137 by affiant at the request of plaintiffs' counsel. The said document was handed by affiant to plaintiffs' coun-

sel, Mr. McConnell, a few days prior to February 14, 1944, when the said cause was set for trial.

After the plaintiffs had closed their case and during the presentation of the evidence for defendants, the said document was referred to by plaintiffs' counsel during the testimony of the defendant Loew's Inc. witness, John E. Flynn, in making objection to certain question put and answer made by the said witness Flynn.

The question and answer and the objection and statement of the court and defendants' counsel, Mr. Seeley are as follows:

"Q. Is it the policy of your company to license pictures elsewhere than in Chicago in accordance with a series of runs and minimum admission prices for each run?

A. Yes, practically speaking, the same plan of release.

Mr. McConnell: I object. I tried to go into the outside situation and had an exhibit here and offered it in evidence, and counsel said, 'We don't want to go into that.'

The Court: Well, let us stick to Chicago.

Mr. Seeley: Very well." (R. 1913-14)

2. At about 2:30 P. M. on March 9, 1944, the court finished reading his instructions to the jury and directed the several counsel representing various parties to the suit to deliver their exhibits to the bailiff, to be taken to the jury room. Thereupon each counsel delivered to the bailiff his exhibits and the bailiff forthwith carried the exhibits so delivered to him by counsel into the jury room.

Affiant delivered to the said bailiff the exhibits of defendants Paramount Pictures Inc. and Balaban & Katz Corporation which had been received in evidence.

138 3. Affiant has not seen the said document marked "Plaintiffs' Exhibit 123 for identification" since the time plaintiffs' counsel offered the same in evidence and the court refused to receive the same in evidence.

Edmund D. Adcock

Subscribed and sworn to before me this 20th day of March, 1944.

Bessie C. Breyer,
Notary Public.

(Seal)

139 EXHIBIT D.

State of Illinois, }
County of Cook. } ss.

Miles G. Seeley, being first duly sworn, upon oath states that he is an attorney at law, with offices at 231 South LaSalle Street, Chicago, Illinois, and that he is one of the attorneys of record for the defendants, RKO Radio Pictures, Inc., Loew's Incorporated, and 20th Century-Fox Film Corporation, in the cause entitled "*Florence B. Bigelow, et al.* v. *RKO Radio Pictures, Inc., et al.*, No. 4525," in the District Court of the United States, for the Northern District of Illinois, Eastern Division, and that he represented said defendants at the trial of said cause before Michael L. Igoe, one of the Judges of said Court, and a jury, from February 14, 1944 through March 9, 1944.

Affiant further says that at approximately 2:30 P. M. on March 9, 1944, the Court finished reading his instructions to the jury and directed the several counsel representing the various parties to the suit to deliver their exhibits to the bailiff to be taken to the jury room; that thereupon each counsel delivered to the bailiff his exhibits and the bailiff forthwith carried the exhibits so delivered to him by counsel into the jury room; that thereupon it was agreed by all counsel in open court that if the jury should not return a verdict before 5:00 P. M. on that date, their verdict should be sealed and should be opened and read by the Clerk at the opening of court on the following day—March 10th; that thereupon affiant left the court room, and the Federal Building wherein said court room is situated, and did not return thereto until 10:00 A. M. on the following day—March 10th.

140 Affiant further says that at 10:00 A. M. on March 10th, the Clerk of said court opened the sealed verdict theretofore returned by the jury and read it; that affiant observed that what appeared to be the exhibits in the case were then on the bailiff's desk in the court room, but that affiant left the court room immediately and without examining said exhibits, and did not return to the court room again that day.

Affiant further says that on the following day—March

11th—at about 10:30 A. M., affiant went to Judge Igoe's court room for the purpose of collecting the exhibits which he had turned over to the bailiff when the jury retired, but found that a hearing was in session before the court and did remain except to make an appointment with the court's bailiff to return at 9:30 A. M. on Monday, March 13, 1944, to collect his exhibits; that affiant did not again enter said court room until about 9:30 A. M. on Monday, March 13th.

Affiant further says that on Monday, March 13, 1944, at about 9:30 A. M., he proceeded to Judge Igoe's court room; that in the corridor outside said court room he met the court's bailiff and entered the court room with him; that said bailiff thereupon accompanied affiant to his desk and showed affiant the exhibits in the case arranged thereon in several stacks; that affiant proceeded to go through said exhibits to find those which he had furnished the bailiff when the jury retired, and in the process of going through the exhibits affiant found a document which had been marked at the trial "Plaintiffs' Exhibit 123 for identification," which had been offered in evidence by plaintiffs' attorney, but which, upon objections made and argued by defendants' attorneys, had not been received in evidence; that affiant immediately called the bailiff to his side, pointed out said "Plaintiffs' Exhibit 123 for Identification" in
141 the exact place where affiant had found it, asked said bailiff to witness the presence of said exhibit among the exhibits returned to the bailiff by the jury upon their discharge, and requested the bailiff to assume custody of said exhibit.

Affiant says that thereupon the bailiff took possession of said "Plaintiffs' Exhibit 123 for Identification" and entered the chambers of Judge Igoe, saying to affiant that he was going to call it to the attention of the Judge; that said "Plaintiffs' Exhibit 123 for Identification" has since remained, to the best of affiant's knowledge and belief, in the possession of Judge Igoe, or the bailiff, or his minute clerk.

Affiant further says that at no time throughout the trial, or thereafter, did he have possession of said "Plaintiffs' Exhibit 123 for Ideatification," and that to the best of his knowledge and belief said exhibit was in the possession of plaintiffs' counsel at all times throughout said trial and until the jury retired; that affiant had no knowledge that said exhibit was to be, or was, or had been, sent to the

jury room until he discovered it as aforesaid among the exhibits in the case on March 13, 1944.

Affiant further says that a copy of said "Plaintiffs' Exhibit 123 for Identification" is hereto attached and marked "Exhibit A."

Further affiant saith not.

Miles G. Seeley.

Subscribed and sworn to before me this 18th day of March, 1944.

William C. Brooks,
Notary Public.

(Seal)

142 EXHIBIT A [Plaintiffs' Exhibit 123 for Identification].

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

There is appended hereto a tabulation consisting of fourteen pages divided into three columns. The first column gives the names of the states of the United States. The second column gives the names of various towns located in the different states named in the first column. The third column gives "number of theatres" located in such states and towns, respectively, shown in the preceding two columns.

At the trial of said cause and for this case only, the defendant Paramount Pictures Inc. will admit, subject to objections as to materiality and relevancy, that as of December 1, 1941, it had an interest in the 1559 motion picture theatres located in the various towns of the various states mentioned in said tabulation attached, and that the extent of its interest therein was as follows:

In 259 of said theatres it had a 100% interest.
In 282 of said theatres it had an interest of 51% to 99%.
In 606 of said theatres it had a 50% interest.
In 335 of said theatres it had a 25% to 49% interest.
In 77 of said theatres it had an interest of less than 25%.

Dated ....., 194....

Edmund D. Adcock,
Arthur A. Goldberg,
Eli E. Fink,
Attorneys for Paramount Pictures, Inc., Defendant.

143 As of December 1, 1941.

State	Town	Number of Theatres
Alabama	Anniston	3
	Auburn	1
	Bessemer	2
	Birmingham	7
	Ensley	2
	Jasper	2
	Mobile	4
	Montgomery	6
	Selma	2
	Troy	2
	Tuscaloosa	4
	Tuskogee	1
Total	12	36
Arizona	Phoenix	5
	Tucson	2
Total	2	7
Arkansas	Camden	4
	Clarksville	2
	Conway	2
	Dardanelle	1
	Fayetteville	4
	Ft. Smith	6
	Helena	2
	Hope	2
	Hot Springs	5
	Jonesboro	3
	Little Rock	8
	McCehoe	2
	Morrilton	1
	Newport	2
	Pine Bluff	2
	Russellville	2
	Smackover	2
	Springdale	2
	Stuttgart	2
	Van Buren	2
Total	20	56

	State	Town	Number of Theatres
144	California	Los Angeles	1
		San Francisco	3
	Total	2	4
	Colorado	Colorado Springs	3
		Grand Junction	2
		Greeley	2
		Pueblo	2
	Total	4	9
	Connecticut	Hartford	1
		New Haven	1
		New London	2
		Norwalk	1
		So. Norwalk	1
	Total	5	6
	Delaware		
	District of Columbia		
	Florida	Arcadia	1
		Bartow	2
		Bellair	1
		Bradenton	2
		Clearwater	2
		Cocoa	1
		Coral Gables	2
		Dania	1
		Daytona Beach	4
		Deland	2
		Delray	2
		Ean Gallie	1
		Eustis	1
		Ft. Lauderdale	4
		Ft. Myers	3
		Gainesville	3
		Hialeah	1

State	Town	Number of Theatres
145		
	Hollywood	3
	Jacksonville	11
	Lakeland	4
	Lake Wales	2
	Lake Worth	2
	Melbourne	1
	Miami	9
	Miami Beach	4
	Mt. Dora	1
	New Smyrna	2
	Ocala	4
	Orlando	9
	Polatka	1
	Palm Beach	3
	Palmetto	1
	Pensacola	4
	Plant City	2
	St. Augustine	2
	St. Petersburg	10
	Sanford	2
	Sarasota	3
	So. Jacksonville	1
	Sulphur Springs	1
	Tallahassee	3
	Tampa	7
	Umatilla	1
	West Palm Beach	5
	Winter Haven	2
	Winter Park	2
Total	46	135
Georgia	Athens	5
	Atlanta	4
	Augusta	5
	Barnesville	1
	Brunswick	3
	Buford	2
	Columbus	4

State	Town	Number of Theatres
146		
	East Macon	1
	Elberton	2
	Gainesville	3
	Lexington	1
	Macon	4
	Moultrie	2
	St. Simons Island	1
	Savannah	5
	Waycross	2
Total	16	45
Idaho	Boise	4
	Idaho Falls	1
	Preston	2
	Twin Falls	2
Total	4	9
Illinois	Alton	2
	Aurora	3
	Berwyn	1
	Bloomington	4
	Blue Island	2
	Chicago	44
	Chicago Heights	3
	Danville	3
	Decatur	2
	Downers Grove	1
	East St. Louis	1
	Edwardsville	1
	Elgin	3
	Evanston	3
	Freeport	1
	Galesburg	3
	Harvey	1
	Joliet	3
	Kankakee	3
	Kewanee	2
	La Grange	2

State	Town	Number of Theatres
	La Salle	2
	Moline	2
	Normal	1
	Oak Park	2
	Pekin	3
	Peoria	6
	Peru	2
	Quincy	4
	Rockford	4
	Rock Island	3
	Springfield	4
	Streator	2
	Waukegan	3
	Wood River	1
Total	35	124
Indiana	Gary	3
	Hammond	3
	Marion	3
	South Bend	4
Total	4	12
Iowa	Algona	2
	Boone	3
	Burlington	4
	Cedar Falls	1
	Cedar Rapids	2
	Centerville	2
	Chariton	2
	Charles City	1
	Clarion	1
	Clear Lake	2
	Clinton	4
	Cresco	1
	Davenport	3
	Des Moines	8
	Eagle Grove	1
	East Des Moines	2

State	Town	Number of Theatres
148		
	Estherville	1
	Forest City	1
	Ft. Dodge	3
	Grinnell	2
	Iowa City	2
	Mason City	3
	New Hampton	1
	Newton	2
	Oelwein	2
	Oskaloosa	3
	Ottumwa	4
	Sioux City	7
	Waterloo	2
Total	29	74
Kansas		
Kentucky	Danville	2
	Fulton	2
	Henderson	3
	Mayfield	1
	Owensboro	4
Total	5	12
Louisiana	Alexandria	3
	Baton Rouge	4
	Monroe	2
	New Orleans	5
	Shreveport	9
Total	5	23
Maine	Auburn	1
	Augusta	2
	Bangor	3
	Bath	2
	Biddeford	2
	Brunswick	2
	Ft. Fairfield	2

State	Town	Number of Theatres
149		
	Gardiner	2
	Hallowell	1
	Houlton	2
	Lewiston	4
	Livermore Falls	1
	Norway	1
	Orene	1
	Portland	2
	Rockland	3
	Rumford	1
	South Paris	1
	Waterville	1
	Westbrook	1
	Wilton	1
Total	21	36
Maryland		
Massachusetts	Allston	2
	Allerton	1
	Arlington	1
	Boston	8
	Brighton	2
	Brockton	2
	Cambridge	1
	Chelsea	2
	Chicopee	1
	Dorchester	6
	East Wilton	1
	Falmouth	2
	Fitchburg	2
	Gloucester	2
	Greenfield	1
	Haverhill	2
	Holyoke	2
	Hyde Park	2
	Jamaica Plains	1
	Lowell	2
	Lynn	2

State	Town	Number of Theatres
150		
	Marlboro	2
	Mattapan	1
	Matick	1
	Needham	1
	New Bedford	2
	Newton	1
	Norfolk Downs	1
	North Adams	2
	Northampton	2
	North Attleboro	1
	No. Cambridge	1
	Palmer	1
	Pittsfield	4
	Roslindale	2
	Roxbury	7
	Somerville	4
	Springfield	3
	Taunton	2
	Waltham	4
	Ware	1
	Westfield	1
	West Newton	1
	Wollaston	1
	Worcester	1
Total	45	92
Michigan	Adrian	2
	Allegan	1
	Alpena	2
	Ann Arbor	2
	Battle Creek	3
	Bay City	4
	Benton Harbor	2
	Big Rapids	1
	Birmingham	2
	Cadillac	2
	Detroit	17
	East Lansing	1

State	Town	Number of Theatres
151		
	Flint	8
	Grand Haven	3
	Grand Rapids	10
	Greenville	2
	Hillsdale	2
	Holland	3
	Ionia	2
	Jackson	5
	Kalamazoo	5
	Lansing	4
	Ludington	2
	Manistee	3
	Monroe	3
	Muskegon	3
	Niles	2
	North Lansing	1
	Owosso	3
	Pontiac	6
	Port Huron	3
	Saginaw	6
	St. Joseph	1
	South Haven	2
	South Lansing	1
	Sturgis	2
	Three Rivers	2
	Traverse City	3
	Ypsilanti	2
Total	39	133
Minnesota	Austin	3
	Duluth	4
	Fairmont	2
	Hibbing	4
	Minneapolis	15
	Moorhead	1
	No. Mankato	1
	Mankato	3
	Rochester	4

State	Town	Number of Theatres
152		
	St. Cloud	4
	St. Paul	10
	Virginia	4
	Winona	4
Total	13	59
Mississippi	Biloxi	2
	Clarksdale	2
	Columbus	3
	Greenville	3
	Greenwood	1
	Gulfport	2
	Hattiesburg	4
	Jackson	5
	Meridian	3
	Natchez	2
	Tupelo	2
	Vicksburg	3
	West Point	2
	Winona	1
Total	14	35
Missouri		
	Kansas City	1
Montana		
Nebraska	Fairbury	2
	Falls City	2
	Grand Island	4
	Hastings	2
	Lincoln	3
	Omaha	3
Total	6	16
Nevada		
New Hampshire	Berlin	3
	Concord	2
	Dover	1
	Portsmouth	1
Total	4	9

State	Town	Number of Theatres
New Jersey	Newark	2
	Peterson	1
Total	2	3
New Mexico	Albuquerque	7
New York	Arlington	1
	Brooklyn	3
	Buffalo	9
	Fulton	2
	Glens Falls	1
	Kenmore	1
	Lackawanna	1
	Middletown	3
	Newburgh	4
	New York City	1
	Niagara Falls	3
	Owego	1
	Peekskill	2
	Poughkeepsie	3
	Rochester	5
	Stapleton	1
	Waverly	2
	Yonkers	4
Total	18	47
North Carblina	Asheboro	1
	Asheville	4
	Burlington	4
	Canton	2
	Chapel Hill	2
	Charlotte	5
	Concord	2
	Durham	3
	Fayetteville	3
	Gastonia	2
	Goldsboro	2
	Greensboro	3

	State	Town	Number of Theatres
154			
		Greenville	3
		Hendersonville	2
		Hickory	2
		High Point	5
		Lenoir	5
		Lexington	2
		Lumberton	2
		Monroe	1
		Mt. Airy	1
		Raleigh	5
		Rockingham	2
		Rocky Mount	3
		Salisbury	3
		West Asheville	2
		Wilmington	5
		Wilson	3
		Winston Salem	4
	Total	29	80
	North Dakota	Fargo	3
		Grand Forks	2
		Jamestown	3
		Minot	3
	Total	4	11
	Ohio	Bellevue	2
		Clyde	1
		Fremont	3
		Hamilton	3
		Marion	2
		Middletown	4
		Toledo	2
	Total	7	17
	Oklahoma	Oklahoma City	11
	Oregon	—	—

State	Town	Number of Theatres
Pennsylvania	Aliquippa	4
	Ambridge	1
	Bloomsburg	2
	Butler	3
	Carlisle	2
	Danville	1
	Dickson City	1
	Dunmore	1
	Duryea	1
	Forest City	1
	Forty Fort	2
	Hawley	1
	Hazelton	3
	Honesdale	1
	Jersey Shore	1
	Kingston	1
	Lebanon	3
	Luzerne	1
	Mauch Chunk	1
	Miners Mills	1
	Northumberland	1
	Old Forge	1
	Olyphant	1
	Parsons	1
	Philadelphia	5
	Pittston	3
	Plymouth	1
	Pottsville	3
	Sayre	1
	Scranton	12
	Shenandoah	2
	Sunbury	2
	Towanda	1
	Upper Darby	2
	Wilkes Barre	9
	Williamsport	3
Total	36	77

	State	Town	Number of Theatres
156	Rhode Island		
		Newport	1
		Pawtucket	1
		Woonsocket	1
	Total	3	3
	South Carolina	Abbeville	1
		Anderson	3
		Columbia	6
		Darlington	1
		Florence	2
		Greenville	3
		Greenwood	3
		Spartanburg	4
		Sumter	2
	Total	9	25
	South Dakota	Aberdeen	3
		Huron	3
		Madison	2
		Mitchell	2
		Sioux Falls	5
		Watertown	4
	Total	6	19
	Tennessee	Bristol	1
		Chattanooga	4
		Elizabethton	2
		Jackson	4
		Johnson City	3
		Kingsport	4
		Knoxville	8
		Memphis	2
		Nashville	1
	Total	9	29

	State	Town	Number of Theatres
157	Texas		
		Abilene	4
		Amarillo	4
		Analmac	1
		Arlington	2
		Arp	1
		Austin	7
		Baytown	1
		Beaumont	8
		Breckenridge	3
		Brownsville	2
		Brownwood	5
		Channelview	1
		Conroe	2
		Corsicana	4
		Dallas	18
		Denison	3
		Denton	3
		Donna	1
		Eagle Lake	1
		Eastland	2
		El Paso	6
		Ft. Worth	10
		Galveston	2
		Gladewater	3
		Goose Creek	2
		Greenville	4
		Greggton	1
		Groves	1
		Hallettsville	1
		Harlingen	3
		Henderson	3
		Houston	21
		Jacksonville	3
		Kilgore	3
		La Porte	1
		Longview	4
		Lufkin	3
		Marshall	3
		McAllen	3

State	Town	Number of Theatres
158		
	Mercedes	3
	Mexia	2
	Mont Belvieu	1
	Nacogdoches	3
	Noderland	1
	Needville	1
	Orange	3
	Overton	2
	Paris	6
	Pelly	1
	Pt. Arthur	6
	Pt. Neches	1
	Ranger	2
	Richmond	1
	Rosenberg	2
	Rusk	1
	San Antonio	13
	San Benito	2
	San Marcos	3
	Silsbee	1
	Temple	5
	Texarkana	2
	Tyler	5
	Vernon	2
	Waco	5
	Wallis	1
	Weslaco	2
	Wichita Falls	5
	Yoakum	2
Total	63	238
Utah	Brigham City	1
	Logan	4
	Ogden	5
	Provo	4
	Salt Lake City	6
Total	5	20

	State	Town	Number of Theatres
159	Vermont		
		Barre	2
		Brattleboro	1
		Burlington	2
		Montpelier	1
		Rutland	3
	Total	5	9
	Virginia		
		Bristol	1
		Cape Charles	1
		Charlottesville	4
		Danville	3
		Exmere	1
		Hampton	2
		Hilton Village	1
		Lynchburg	3
		Newport News	2
		Phoebus	1
	Total	10	19
	Washington	—	—
	West Virginia		
		Bluefield	2
		Wheeling	1
	Total	2	3
	Wisconsin		
		Eau Claire	3
		La Crosse	2
		Superior	3
	Total	3	8
	Wyoming	—	—

160 **EXHIBIT E.**

State of Illinois, } ss.
County of Cook. }

John Clifford, being first duly sworn, on oath says that he is the personal bailiff of Judge Michael L. Igoe, one of the Judges of the United States District Court for the Northern District of Illinois, Eastern Division; that in said capacity he was present in Judge Igoe's court room throughout the trial of the cause entitled "*Florence E. Bigelow, et al.* v. *RKO Radio Pictures, Inc., et al.*, No. 4525," and was one of two bailiffs in charge of the jury impaneled to hear said cause; that about 2:30 P. M. on March 9, 1944, the Court, having finished reading his instructions to the jury, directed the jury to retire to begin their deliberations and directed counsel for all parties in the case to give to affiant their respective exhibits to be taken into the jury room.

Affiant says that thereupon counsel for all parties in the case, including counsel for plaintiffs, delivered to affiant their purported exhibits, and that affiant took them into the jury room.

Affiant futher says that by order of the Court, and upon agreement by all counsel, the jury were directed to return a sealed verdict, and that such a sealed verdict was delivered to him at approximately 10:30 P. M. on March 9, 1944; that thereupon the jury were discharged and left the jury room; that affiant thereupon entered the jury room, and finding the exhibits in the case scattered about in considerable confusion, gathered them together and removed them to the top of his desk in the court room,

where they remained until Tuesday, March 14th, with
161 the exception of certain exhibits which were removed by counsel during that period.

Affiant further says that about 10:30 A. M. on March 11, 1944, Miles G. Seeley, attorney for certain defendants in said case, entered the court room and said to affiant that he had come for the exhibits which he had delivered to affiant at the time the jury retired; that there was then a hearing in progress before the Court, and affiant advised

said attorney to return at 9:30 A. M. on Monday, March 13th, and that said attorney then left the court room.

Affiant further says that on March 13, 1944, at about 9:30 A. M., he met said attorney in the corridor outside the court room and accompanied him into the court room and showed him the exhibits which were stacked on affiant's desk; that said attorney proceeded to look through said exhibits, during which time affiant did not remain in the immediate vicinity of his desk; that about five minutes thereafter said attorney summoned affiant and showed him in one of the stacks of exhibits, a document marked "Plaintiffs' Exhibit 123 for Identification" and advised affiant that said exhibit had just been found there by said attorney and had not been removed by him; that said attornay asked affiant to witness the fact that said exhibit was among the exhibits which were before the jury during their deliberations and asked affiant to assume custody thereof; that thereupon affiant assumed possession of said exhibit and took it into the Judge's chambers, and that said attorney thereupon left the court room.

Affiant further says that since said "Plaintiffs' Exhibit 123 for Identification" was so pointed out to him it has remained in the possession of affiant, or of the Court, or of the Court's minute clerk.

Affiant further says that to the best of his knowledge and belief said "Plaintiffs' Exhibit 123 for Identifi- 162 cation" was among the exhibits which were handed to him by counsel when the jury retired, and was among the exhibits which were in the jury room during the deliberations of the jury.

Further affiant saith not.

John F. Clifford.

Subscribed and sworn to before me this 18th day of March, 1944.

Celia M. Howard.

(Seal) *Notary Public*

163 EXHIBIT F.

Plaintiffs seeks to recover damages for the alleged acts of defendants on one of two theories, as follows:

(1) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from July 28, 1937 to July 28, 1942 were less than they would have been had the gross receipts from admissions and the film rental expense of the Jackson Park Theatre been equal to the amount of the gross receipts from admissions and film rental expense of the Maryland Theatre of the defendant Balaban & Katz Corporation for said five year period.

(2) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from July 28, 1937 to July 28, 1942, were less than five times the average yearly profits of said theatre for the four year period prior to said July 28, 1937, eliminating estimated "Bank Night" receipts for the year 1936.

The jury are instructed that if they find from a preponderance of all the evidence that plaintiffs have been injured by the alleged acts of defendants, they must choose one or the other of said two theories of determining damage or the amount of damages.

If the jury selects the first theory of determining damages as above mentioned, they must first find from a preponderance of all the evidence what amount of the gross receipts from admissions and amount of expense of film rental of the Maryland Theatre for the said five year period from July 28, 1937 to July 28, 1942, was derived or resulted from the operation of the Maryland Theatre under normal conditions of free and open competition and

not from or as the result of the operation of said
164 theatre in the playing position, under clearances and minimum admission prices allegedly provided by the so-called system of release and under double feature policy alleged and claimed by the plaintiffs to have been established, maintained and continued by defendants through conspiracy and unlawful agreement, and the jury shall use said gross admissions amount and said film rental expense

so to be found by them as the factor from which to calculate the damages for said five year period.

If the jury selects the second theory above mentioned to determine and fix damages, they must first find from a preponderance of all the evidence what if any portion of the yearly average profits of the operation of the Jackson Park Theatre for the four year period prior (eliminating certain "Bank Night" receipts) to said July 28, 1937 was derived from operation under conditions of free and open competition and not from operation in the playing position, under the clearances and minimum admission prices of the so-called system om release and under double feature policy which plaintiffs allege and claim defendants by conspiracy established, maintained and continued, and the jury shall then use such, if any, portion of said yearly average as the factor from which to determine the damages sought to be recovered by plaintiffs.

165 And afterwards on, to wit, the 15th day of April, 1944, there was filed in the Clerk's office of said Court a certain Affidavit of Thomas C. McConnell; Norman A. Korfist and Richard B. Salkin, in words and figures following, to wit:

166 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—1525)

AFFIDAVIT.

State of Illinois, }
County of Cook. } ss.

Now comes Thomas C. McConnell and being duly sworn on oath deposes and states that he is an attorney duly admitted to practice law in the State of Illinois and has been so licensed at all times since October 1924; that he is duly admited to practice in this Court and that he is the attorney for the plaintiffs in the above entitled cause;

That he has read the affidavits submitted in support of the defendants' motion for a new trial herein and in reply says that on the 22nd day of February, 1944, during the trial of this cause he offered into evidence on behalf of

the plaintiffs a certain document marked for identificatio Plaintiffs' Exhibit 123; that this document consisted of list of theatres and stated that "* * * Paramount Pi tures Inc. will admit, subject to objections as to materialit and relevancy, that as of December 1, 1941 it had an interes in the 1559 motion picture theatres located in the variou towns of the various states mentioned in said tabulatio attached, * * *"; that there then followed a tabulatio of said theatres without further characterization; that upo the offer of said document Mr. Seeley of defense couns objected on the ground that said document was immaterial that argument on the admissibility of said document wa deferred, and that then and there Mr. Adcock of defens counsel asked to examine said document; that thereupo Mr. Norman A. Korfist, in affiant's presence, handed sai document to Mr. Adcock; that thereafter, on February 2 1944, argument was had on the objection of Mr. Seeley t said document and affiant gained the impression that th Court's ruling would be adverse on the offer; that there after affiant again offered said document and did not hea the Court's ruling but assumed it was adverse to th 167 admission of said document; that thereafter and at th close of plaintiffs' case affiant again offered said docu ment in a blanket offer of all Plaintiffs' Exhibits and th Court ruled "The offer will be accepted"; that thereafte Mr. Seeley asked that said blanket offer be qualified an the Court asked all counsel to check to see if the offer in cluded anything to which objections had been sustained that affiant, believing that the Court had ruled adversel on the offer of Plaintiffs' Exhibits 123 and 123-A, in structed Mr. Korfist not to include them in Plaintiffs' Ex hibits; that affiant never at any time saw Plaintiffs' Ex hibit 123 after it was handed to Mr. Adcock by Mr. Korfist that Plaintiffs' Exhibit 123-A has at all times been in th possession of affiant;

That after reading the affidavits in support of defend ants' motion for a new trial, affiant consulted the transcrip of testimony prepared by Leon M. Golding, the court re porter employed by plaintiffs, and found that said tran script shows the following:

"Whereupon the documents so offered and received i evidence were marked Plaintiffs' Exhibit 123 and 123-A and are in words and figures as followes, to wit:"

that thereupon affiant called the court reporter employed by the defendants and talked to Mr. Organ and was advised that their transcript likewise shows Plaintiffs' Exhibit 123 as admitted in evidence:

Further affiant saith not.

Thomas C. McConnell.

Subscribed and sworn to before me this 13th day of April, 1944.

Irene M. Koenig,
Notary Public.

(Seal)

168 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

AFFIDAVIT

State of Illinois, } ss.
County of Cook. }

Norman A. Korfist, being first duly sworn, upon oath deposes and says that he is an attorney at law duly licensed to practice in the State of Illinois and has been since October 1931:

That on March 9, 1944, immediately prior to the Court having charged the jury and the swearing in of the Marshals to take custody of the jury, affiant checked against a check list Plaintiffs Exhibits hereinafter designated which had been offered and received in evidence on behalf of the plaintiffs and which had been marked, respectively, Plaintiffs' Exhibits 1, 4 to 49, both inclusive, 53 to 122, both inclusive, 124 to 156-A, both inclusive, and 173; that affiant placed said documents together in consecutive order; that after the Court had charged the jury and had sworn in the Marshals to take custody of the jury, affiant delivered to the two Marshals the said exhibits marked as aforesaid; that affiant did not then or at any other time deliver to said Marshals or to anyone else any other papers for transmission to the jury room, nor did affiant at any time deliver to said Marshals or to any one else, for transmission to the jury room, a document marked for identification Plaintiffs' Exhibit 123, being a certain list of theatres owned and op-

erated by defendant Paramount Pictures, Inc.; that said two Marshals then took the exhibits so delivered into the jury room and the jury retired to deliberate;

Affiant further says that he did not return to the Court House until shortly before 10 o'clock in the forenoon of the following day, March 10, 1944; that when affiant entered the court room he saw Mr. Vincent O'Brien at the Marshal's desk in the court room, immediately adjacent to the entrance to the Court's chambers, examining and going through the exhibits then on said desk; that affiant at that time and before the Court took the bench went up to the Marshal's desk, checked through the exhibits then on said desk and took from said exhibits the following: 1, 8 to 44, both inclusive, and 49; that at that time affiant observed the exhibits and there was no document among said exhibits marked for identification Plaintiffs' Exhibit 123; that said latter exhibit was particularly known to affiant in that it was backed with the gray-colored firm back of Adcock, Fink & Day and was marked with an identify-
169 ing number at the top of the folded back; that affiant knows of his own knowledge that said document was not on the Marshal's desk at the time affiant made said check and examination; that during the time of said check and examination Marshal Clifford and Mr. O'Brien were at all times present, as was Mr. Richard Salkin; that affiant gathered up the aforesaid Plaintiffs' Exhibits, departed from the Marshal's desk, handed said exhibits over to Mr. Salkin, who placed them in a brief case, and that all this took palce before Judge Igoe took the bench;

Affiant further says that he remained to hear the verdict read and then left the Court House and that he did not at any time thereafter return to the Court House until Tuesday morning, March 14, 1944;

Affiant further states that during the course of the trial he took care of plaintiffs' exhibits; that the last time affiant saw the aforesaid exhibit marked for identification Plaintiffs' Exhibit 123 was on the afternoon of February 22, 1944, when Mr. Thomas C. McConnell offered into evidence said exhibit after identifying the same under said identification number; that thereupon and at that time Mr. Edmund D. Adcock asked to see said document; that the same was then handed to affiant by Mr. McConnell and affiant in turn then and there handed said document to Mr. Adcock

and that affiant has never at any time since said occasion seen that document;

That on the following day, February 23, 1944, Mr. McConnell on behalf of the plaintiffs offered into evidence a document referred to by him as Plaintiffs' Exhibit 123-A for identification but which document was inadvertently marked by the court reported as Plaintiffs' Exhibit 123 for identification, said document being a certain list of theatres bearing the following heading: Theatres In The Operation Of Which Loew's Incorporated Is Interested Either Directly Or Through A Subsidiary To The Extent Indicated"; that at the same time Mr. McConnell made a re-offer of Plaintiffs' Exhibit 123, which latter exhibit at that time was still in the possession of Mr. Adcock; that upon such offer being made, affiant placed Plaintiffs' Exhibit 123-A in Mr. McConnell's brief case, where it was and now is located, and that said exhibit marked for identification Plaintiffs' Exhibit 123 was never returned to Mr. McConnell or to affiant by Mr. Adcock.

Further affiant saith not.

Norman A. Korfist.

Subscribed and sworn to before me this 4th day of April, 1944.

Irene M. Koenig.

(Seal) *Notary Public.*

170 In the District Court of the United States.

(Caption—4525)

AFFIDAVIT.

State of Illinois, } ss.
County of Cook. }

Richard B. Salkin, being first duly sworn, upon oath deposes and says that on March 9, 1944, immediately prior to the time the Court had charged the jury and had sworn in the Marshals to take custody of the jury, he together with Mr. Norman A. Korfist checked all of the plaintiffs' exhibits against a check-list which had been prepared by Mr. Korfist as the exhibits were admitted in evidence; that only the

exhibits which had been admitted in evidence by order of Court were included in said exhibits; that affiant knows of his own knowledge that plaintiffs' exhibit marked for identification 123 was not in the list of exhibits so checked and then collected together; that after the Court had charged the jury and had sworn in the Marshals to take custody of the jury, affiant together with Mr. Korfist delivered to the Marshals all of the exhibits so checked and collected together which were received in evidence on behalf of the plaintiffs, and that affiant did not then or at any other time deliver to said Marshals or to anyone else any document marked for identification Plaintiffs' Exhibit 123 for transmission to the jury room; that thereupon said Marshals took the exhibits so delivered into the jury room and the jury retired to deliberate;

Affiant further says that he thereupon left the Court House and did not return thereto until shortly before 10 o'clock in the forenoon on the following day, March 10, 1944; that when affiant entered the court room he saw Mr. Vincent O'Brien at the Marshal's desk in the court room 171 immediately adjacent to the entrance to the Court's chambers, examining and going through the exhibits then on said desk; that affiant at that time and before the Court took the bench went up to said Marshal's desk and there gathered up a portion of the plaintiffs' exhibits and that at that time he checked through said exhibits on said Marshal's desk and affiant says that at that time there was no exhibit marked Plaintiffs' Exhibit 123 for identification in said group of exhibits; that during the time of said checking, Mr. O'Brien, Mr. Korfist and Marshal Clifford were at all times present;

Affiant further says that he remained to hear the verdict read and then left the Court House and that he has not returned to the Court House since that time, and that he at no time had in his possession the exhibit marked Plaintiffs' Exhibit 123 for identification.

Further affiant saith not.

(s) Richard B. Salkin.

Subscribed and sworn to before me this 28th day of March, 1944.

Irene M. Koenig,

(Seal) *Notary Public.*

172 And afterwards, to wit, on the 19th day of April, 1944, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

173 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

ORDER.

This Cause coming on to be heard upon notice and motion of the defendants, it is hereby ordered:

1. That the time within which the defendants may file their reply brief to the brief of the plaintiffs filed April 15, 1944 be and it is hereby extended to and including April 29, 1944.

2. That defendants be and they are hereby allowed until April 29, 1944 to file objections to the proposed findings of fact and decree served upon it by the plaintiffs on April 15, 1944, and to file suggested findings of fact and decree on behalf of the defendants.

3. That the date for oral argument upon the motions of the defendants for judgment notwithstanding the verdict or, in the alternative, for a new trial, be, and it is hereby continued to May 19, 1944 at 2 P. M.

4. That the defendants be and they are hereby allowed to file counter affidavits in support of said motion for a new trial on or before April 29, 1944.

Enter:

Igoe,
Judge.

Dated April 19, 1944.

174 And afterwards on, to wit, the 29th day of April, 1944, there was filed in the Clerk's office of said Court certain Counter-Affidavits for Defendants in Opposition to Counter-Affidavits of Plaintiffs, Etc., in words and figures following, to wit:

175 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

AFFIDAVIT.

State of Illinois, } ss.
County of Cook. }

Edmund D. Adcock, being first duly sworn, on oath deposes and says that he is a resident of the county and state aforesaid, and is attorney for Balaban & Katz Corporation and Paramount Pictures, Inc., defendants in the above entitled cause; that he is the same person who made affidavit in support of the defendants' motion for new trial filed March 24, 1944; that he has read what purport to be printed copies of the affidavits of Thomas C. McConnell, Norman A. Korfist and Richard B. Salkin attached to the brief of plaintiffs in reply to defendants' motion filed as aforesaid March 24, 1944.

Affiant further states:

1. On March 7, 1944, the defendants rested, and thereafter plaintiffs offered certain rebuttal evidence and rested, and various motions of defendants were presented. On
176 March 8, 1944, Mr. McConnell made his opening summation for the plaintiffs and Messrs. Seeley and O'Brien presented their respective summations. The rest of the court day was taken up in discussion of proposed instructions. It was understood then that on the following day, March 9, 1944, affiant would conclude the defendants' summation, and thereupon Mr. McConnell would present the closing summation for the plaintiffs, and the court would instruct the jury so that the case could be submitted that day to the jury.

2. In the evening of March 8, 1944, affiant with Mr. Arthur A. Goldberg and Bessie C. Breyer, associated with affiant, worked at affiant's office going over the transcript and abstracts of the transcript of evidence, exhibits, etc., in the preparation of affiant's notes for his summation to the jury on the following day. During said evening affiant told Miss Breyer that it would be necessary to have Paramount-Balaban & Katz exhibits admitted or read in evidence, ready for handing to the marshal immediately upon

the court's having finished his instructions to the jury the following day. Thereupon affiant examined the list of exhibits prepared from day to day during the trial by Miss Breyer which showed the numbers and description of the different exhibits of the different parties marked for identification and received in evidence, as well as those marked and not received. Affiant then examined that portion of the list of exhibits above described which listed specifically Paramount-Balaban & Katz exhibits marked for identification, received or read in evidence, as well as those merely marked and not received in evidence. There were 16 of such exhibits marked for identification, 12 of which were shown by the list to have been admitted or read in evidence. Affiant then and there by pencil check marks placed at the right of the column containing the number of the exhibits indicated those exhibits which should be
177 handed to the marshal after the court had instructed the jury, except as to Paramount-Balaban & Katz Exhibit 16, which was a statement of Maryland figures requested of the witness Immerman and which affiant did not then check because affiant was not sure at that time that it should be presented by him to the jury as affiant had a recollection then that Mr. McConnell had asked Mr. Immerman for the statement and that perhaps it was a document that should be presented by Mr. McConnell for consideration by the jury.

Miss Breyer then got together the exhibits so checked by affiant, including also Paramount-Balaban & Katz Exhibit 16, except Paramount-Balaban & Katz Exhibits 4, 4A, 4B and 6 which were large maps or charts then in the courtroom.

On further examination of the record and consideration of the document Paramount-Balaban & Katz Exhibit 16, affiant concluded that it was a document which was proper for affiant to have handed to the marshal for the jury's consideration. Thereupon Miss Breyer placed a check mark in pencil to the right of the figure "16" appearing in said list of exhibits.

The exhibits so checked as above stated with the description of same as appears in the said list, are as follows:

B&K & Par. Ex.	
1	Letter July 6, 1942—Jackson Pk., by Salkin to J. J. Donohue of Paramount.
3	Book of photographs of various theatres.
4	Map.
4A	Cellophane Chart.
4B	
5	Department of Commerce Report re map material.
6	Map.
10	Statement of Tivoli Receipts 1933-43 (read in evidence).
178 11	Statement of Tower Receipts.
12	Graph covering Tower.
13	Graph covering Maryland.
14	Graph covering Jax Pk.
15	Stipulation re Neil Agnew testimony (read into record).
16	Statement of Maryland figures requested of Immerman.

Affiant and Miss Breyer then went over the exhibits which she had gathered together, which were all those checked with pencil mark as aforesaid except the exhibits above mentioned that were in the courtroom. Affiant then instructed Miss Breyer to keep such exhibits together and to have them ready for handing to the marshal after the court had instructed the jury.

The next day, March 9, 1944, in the afternoon, after the court had instructed the jury, affiant assisted in the taking by the marshal of those exhibits above mentioned, being maps and cellophane charts, to the jury room, and Miss Breyer brought to affiant the other Paramount-Balaban & Katz exhibits checked and gathered together the evening before, and affiant then with Miss Breyer checked the exhibits which she had in her hands with the list of exhibits so checked as aforesaid the night before, and affiant and Miss Breyer, Miss Breyer carrying the exhibits just then checked as aforesaid, went over to the lady marshal, whereupon Miss Breyer handed said exhibits to the lady marshal.

Plaintiffs' Exhibit 123 for identification was not with the exhibits so handed to the marshals, and affiant did not

then or at any other time hand or assist in handing to the marshals any exhibits other than the exhibits above described.

3. With respect to the affidavits of Messrs. McCon-179 nell and Korfist to the effect, in substance, that at the time Plaintiffs' Exhibit 123 for identification was so marked by the reporter and offered in evidence by Mr. McConnell, affiant requested of Mr. McConnell that affiant be permitted to examine the exhibit and that thereupon Mr McConnell handed the exhibit to Mr. Korfist who thereupon handed it to affiant, affiant states that he has no recollection of making any such request or of ever having the exhibit in his hands after the time the document, later marked as aforesaid, was handed to Mr. McConnell personally by affiant on February 9, 1944 along with other documents requested by Mr. McConnell which was accompanied by letter from affiant to Mr. McConnell dated February 9, 1944, stating with reference to the document later marked Plaintiff's Exhibit 123 for identification:

"I am enclosing also admission with respect to number of theatres in which Paramount has an interest in different parts of the country."

Affiant states that at the time he delivered to Mr. McConnell the document later marked Plaintiffs' Exhibit 123 for identification, he had in his possession a number of carbon copies of the same, and that all through the trial copies of said exhibit were available to affiant if he desired to examine any one of them.

Affiant states that he never had in his hands or possession the said document after it was delivered to Mr. McConnell as aforesaid on February 9, 1944, and affiant never saw said document after February 9, 1944, until it was identified and offered in the afternoon of February 22, 1944, and at that time he only saw it in Mr. McConnell's hands, and affiant has not seen the said document since said time.

Affiant has searched the transcript of the record following the time Plaintiffs' Exhibit 123 for identification was identified by Mr. McConnell as aforesaid to ascertain 180 whether there is any place in the record which indicates that affiant had made request of Mr. McConnell to see said document and affiant has found nothing in the record showing that any such request was made.

Affiant appends hereto, marked "Exhibit A" a copy of

those portions of the transcript where Plaintiffs' Exhibit 123 for identification was mentioned or referred to.

4. Shortly after the afternoon session began on February 22, 1944, and beginning with Record 796 and ending with Record 844, the plaintiffs offered and there were received in evidence seventy exhibits numbered from 52 to 122. These exhibits consisted of a vast number of documents in folders containing contracts between Balaban & Katz and various distributors covering the years 1936-37 to 1941-42, both inclusive, there being a folder and an exhibit for each year, and there were also in the said exhibits clearance schedules for various years each schedule containing in some instances a number of pages. On the afternoon of said day and after Plaintiffs' Exhibit 123 for identification was identified, plaintiffs offered and there were received in evidence Plaintiffs' Exhibits 124 to 129, both inclusive, consisting of similar folders, and on the following day plaintiffs offered and there were received in evidence Plaintiffs' Exhibits 130 to 154, both inclusive, exhibits of similar character.

5. After the court had ruled on February 23, 1944, that it would not receive in evidence Plaintiffs' Exhibit 123 for identification, there was never any question in affiant's mind that plaintiffs' counsel claimed or might claim that said document had been received in evidence until the morning of Monday, March 13, 1944, when Mr. Seeley telephoned affiant stating that among the documents on the marshal's desk in the courtroom of Judge Igoe, which documents purported to be those which had been in the jury room and taken from the jury room and put on the
181 marshal's desk or table, he had found Plaintiffs' Exhibit 123 for identification. Thereafter affiant, with Miss Breyer, checked the two copies of the stenographic transcript of the record which affiant received from the court reporters from day to day as the trial had proceeded, and found in one of the copies page 882, as follows:

"The Court: Yes.

Mr. O'Brien: We have the same objection.

Mr. McConnell: I think we will mark this Plaintiffs' Exhibit A of this date, so we won't get confused with our other lists.

Mark this 123-A, then. And the Exhibits are offered as Plaintiff's Exhibits 123 and 123-A.

(Said documents, so offered, were received in evidence.

as Plaintiffs' Exhibits 123 and 123-A, and are in words and figures as follows, to-wit:)"

In the other copy of the transcript, which is the one Miss Breyer had used in making up her exhibit list from day to day, there was no page 882 as it had been inadvertently omitted by the court reporter from that copy.

Affiant then with Messrs. Seeley and O'Brien talked to Mr. Organ, the court reporter, about the transcript showing that Plaintiffs' Exhibits 123 and 123-A for identification had been admitted in evidence, and affiant and Messrs. Seeley and O'Brien told him that the transcript was wrong as the court had never received them in evidence.

6. Counsel for the different parties have entered into a stipulation which, in substance, agrees that if two or more jurors were present in court they would testify that said Plaintiffs' Exhibit 123 for identification was present in the jury room during their deliberation upon their verdict, and that such jurors before they had reached their verdict saw, observed and examined the contents of said document.

182 7. Affiant did not directly or indirectly cause the said Plaintiffs' Exhibit 123 for identification to be delivered to the marshals or either one of them, nor did he do anything directly or indirectly by which the said document found its way to and was in the jury room at the time of the deliberation of the jury on their verdict. How said document reached the jury room and was in the presence of the jury, affiant has no knowledge.

Edmund D. Adcock.

Subscribed and sworn to before me this 26th day of April, A. D. 1944.

(Seal) Bessie C. Breyer,
Notary Public.

183 EXHIBIT A.

Afternoon of February 22, 1944—R. 845:

"Mr. McConnell: Mark this Plaintiffs' Exhibit 123.

(Said document so marked by reporter.)

Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 123, tabulation of fourteen pages of different theatres, for which Paramount Pictures, Inc., admits ownership or control.

Mr. Seeley: I object to that, your Honor. I have a point there on which I would like to be heard.

The Court: What is that offer?

Mr. McConnell: An offer of a tabulation of theatres in which Paramount Pictures, Inc., has an ownership.

Mr. Seeley: All over the country.

Mr. McConnell: All over the country.

Mr. Seeley: We object to it as irrelevant, immaterial—

The Court: Let us pass that for the time being. He made the offer and we can pass on it later on."

Opening of Court 10:30 A. M. February 23, 1944 R. 879-882:

"Mr. McConnell: An offer was made here, sort of a stipulation, between counsel as to the facts. It shows the theatres of the different distributors who were involved here, through their exhibiting outlets, that is, the distributors in this case are also exhibitors in different parts—

The Court: Bring the jury in.

Mr. McConnell: (Continuing.) —of the country.

Now, that offer was made to negative any inference here which I think is implied in the statements which both Mr. Seeley and Mr. O'Brien made to the jury, that they are under some coercive situation here. In other words, shows they are bargaining agents because they have buying power themselves.

184 Mr. Seeley: We object to the admission of that evidence, on the ground that it is immaterial. I do not think it proves anything relative to this case at all. It is evident there will be no attempt to connect it with anything that was done in Chicago. It is a fact from which I presume counsel would seek to make some argument without there being any explanation of the circumstances, how the fact came to be. It is an issue which we obviously can not go into in this case, neither side. The defendants have no intention to go into it.

Mr. McConnell: Well it shows that they have tremendous buying power in their own right.

The Court: You charge them with conducting a monopoly here—

Mr. McConnell: Yes.

The Court: (Continuing.) —so far as you are concerned.

Mr. McConnell: They are claiming an inference from their argument—

Mr. O'Brien: It has nothing to do with Chicago. If we let this in it will take it all over the United States.

The Court: I think you ought to limit this to the place you live in, here in Chicago. Good morning ladies and gentlemen.

(And thereupon the following proceedings were had in the presence and hearing of the Jury:)

Mr. O'Brien: I would like to make a motion, your Honor, in respect to all of these contracts. They are material for this suit, but we don't want them out in a public record, where they are available to those who have only a monetary interest.

Mr. Adcock: I cannot hear you.

Mr. O'Brien: Who have only a monetary interest, and I am asking that the contracts which were offered and any which may be offered at the end of the trial be filed with the Clerk of the Court, and sealed and impounded by him, or photostats of them, subject to inspection, of course, by any of the parties or their counsel of record. I have shown that to Mr. McConnell, and that is agreeable.

The Court: Very well.

185 Mr. McConnell: No objection, your Honor.

The Court: Very well. Is that a draft order you have there?

Mr. O'Brien: Yes, sir.

The Court: I think we have a witness on the stand from yesterday.

Mr. Adcock: Where is Mr. Immerman?

The Court: All right, brother Immerman.

Mr. McConnell: If the Court please, before we go further with this witness, for the record, I want to offer these—

Mr. Adcock: I have not finished my examination.

Mr. Seeley: This is another point.

Mr. McConnell: The point we just argued, Mr. Adcock. I want to offer these lists which were offered, and which the Court has ruled on.

The Court: Yes.

Mr. O'Brien: We have the same objection.

Mr. McConnell: I think we will mark this Plaintiffs' Exhibit A of this date, so we won't get confused with our other lists.

Mark this 123-A, then. And the Exhibits are offered as Plaintiffs' Exhibits 123 and 123-A.

(Said documents, so offered, were received in evidence as Plaintiffs' Exhibits 123 and 123-A, and are in words and figures as follows, to-wit:)"

Afternoon of February 23, 1944—R. 991:

"Mr. McConnell: Just to cover anything that we have overlooked here between ourselves and the court reporters, I have offered in evidence all documents which have been identified here as Plaintiffs' Exhibits 1 to 155, except that I did not offer exhibits identified as Plaintiffs' Exhibit 2, Plaintiffs' Exhibit marked for identification 3, Plaintiffs' Exhibit marked for identification 50, Plaintiffs' Exhibit marked for identification 51, and 52. Now, with those exceptions, I re-offer all those documents at this time. I am sure the record shows the ruling of the Court on all of them. So there will be no question about my offer, I renew it now.

186 Mr. Adcock: I don't know why it is necessary to re-offer them.

Mr. McConnell: I am offering them for my record, for my own protection.

The Court: All right, that re-offer will be accepted."

February 24, 1944—R. 1034-35:

"Mr. Seeley: Yesterday, when Mr. McConnell re-offered all his exhibits, some of the exhibits included in the whole list are those which have heretofore been refused by the Court.

I noticed the Court made no ruling, but I suppose the record ought to show that the ruling which the Court has heretofore made throughout the trial, stand to the present offer.

The Court: I couldn't keep track of all of them. I just assumed he was offering those that had been admitted.

Mr. McConnell: What ones are you referring to?

Mr. Seeley: Well, I understand that the list of theatres all over the country, for instance, was included in the re-offer which you made.

Mr. McConnell: That is right. That is the only one I know of that has not been offered.

Mr. Seeley: I could not trust my memory on every one.

Mr. Adcock: I don't remember, either.

The Court: You will have a chance to check it up, and

whatever were refused admission, of course, ought to be eliminated.

Mr. Seeley: Yes.

Mr. Adcock: There were certain documents that were marked by the reporter, never discussed, never came before the Court of the jury at all, that were included in those numbers. I haven't the list. Miss Breyer has the list.

Mr. McConnell: I don't want to take advantage of anything. I just want to have a blanket offer which would cover the record.

The Court: It is understood, as you go along, and recheck the offer, whatever were not admitted, why, of course, they will be eliminated."

187 During the direct examination by Mr. Seeley of Mr. Flynn, witness for Loew's, on March 2, 1944, Pl. Ex. 123 id. was referred to by Mr. McConnell in making objection to a question put to Mr. Flynn by Mr. Seeley, which objection was sustained, as follows (R. 1913):

"Q. Is it the policy of your company to license pictures elsewhere than in Chicago in accordance with a series of runs and minimum admission prices for each run?

A. Yes, practically speaking, the same plan of release.

Mr. McConnell: I object. I tried to go into the outside situation and has an exhibit here and offered it in evidence, and counsel said, 'We don't want to go into that.'"

188 In the District Court of the United States.

(Caption—4525)

AFFIDAVIT.

Bessie C. Breyer, being first duly sworn, on oath deposes and says that she is a resident of the county and state aforesaid; that she is employed in the office of Edmund D. Adcock, one of the counsel for defendants Paramount Pictures, Inc. and Balaban & Katz Corporation in the above entitled cause; that she has been associated with Edmund D. Adcock in connection with his law practice since October, 1922; that she has read the foregoing affidavit made by Edmund D. Adcock dated April 26, 1944; that the statements made in said affidavit as to things done by her are true and correct.

Affiant further states that during the trial affiant had charge of keeping the original documents, exhibits and copies of exhibits, and made from day to day a list of documents marked for identification and received in evidence, read in evidence or identified and not received in evidence. Affiant also made from day to day a chronology of the matters and things done in the course of the trial in the way of names of witnesses testifying from day to day and 189 the number of exhibits identified from day to day, as well as other important matters; that affiant also was familiar with the files and documents handled by Mr. Adcock during the course of the trial.

Affiant further states that the last time she saw the document according to the transcript later marked for identification Plaintiffs' Exhibit 123 which contained a tabulation of theatres in various states and towns in which Paramount Pictures Inc. was said to have had some interest, was on February 9, 1944, when she placed a cover upon the said document and handed the same to Mr. Adcock with a letter of the same date referring to said document, among other documents, which letter and document Mr. Adcock said he desired to deliver to Mr. McConnell whose office was then and is now on the floor below that of Mr. Adcock.

Affiant further states that she never saw said document after it was marked for identification Plaintiffs' Exhibit 123 in her possession or that of Mr. Adcock; that she was present almost continuously during the trial of said cause and never heard Mr. Adcock ask Mr. McConnell or Mr. Korfist to see or examine Plaintiffs' Exhibit 123 for identification, nor did she ever see such document in Mr. Adcock's hands or possession during said trial; that she never handed or assisted in handing said document to the Marshals at the time the jury retired after being instructed by the court at the end of the trial of said cause.

Bessie C. Breyer.

Subscribed and sworn to before me this 26th day of April, A. D. 1944.

John W. Day,
Notary Public.

(Seal)

190 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

COUNTER-AFFIDAVIT OF MILES G. SEELEY, ATTORNEY FOR CERTAIN DEFENDANTS, IN SUPPORT OF MOTION FOR A NEW TRIAL.

State of Illinois } ss.
County of Cook }

Miles G. Seeley, being first duly sworn, on oath says that he is counsel in the above entitled cause for the defendants RKO Radio Pictures, Inc., Loew's, Incorporated and Twentieth Century-Fox Film Corporation and that in such capacity he was present throughout the trial of said cause.

Affiant further says that he had custody of and that he alone handled at said trial the exhibits and other documents and papers brought into or received in the court-room on behalf of said defendants and that he never saw or had possession of Plaintiffs' Exhibit 123 for identification prior to March 13, 1944, when he saw it under the circumstances set forth in his affidavit attached to the motion for new trial herein.

191 Affiant further says that he knew the nature and contents of said exhibit by reason of having received from Mr. Edmund D. Adcock, attorney for certain other defendants, before the commencement of the trial, an unsigned copy thereof.

Affiant further says that on March 9, 1944, after the reading of the Court's instructions to the jury, and while the jury were retiring to the jury room to deliberate upon a verdict, he personally checked and delivered to one of the bailiffs the exhibits received in evidence during the trial on behalf of his clients and that Plaintiffs' Exhibit 123 for identification was not among such exhibits.

Affiant further says that he does not know from what source or in what manner said exhibit reached the jury and has no knowledge or information as to the whereabouts or custody of said exhibit at any time during the trial, except that he presumes that said exhibit was in the possession

of plaintiffs' counsel on February 22, 1944 when it was offered in evidence.

Further affiant sayeth not.

Miles G. Seeley.

Subscribed and sworn to before me this 26 day of April, 1944.

William C. Brooks,
Notary Public.

(Seal)

Received a copy of the foregoing affidavit this day of April, 1944.

Thomas C. McConnell,
Attorney for Plaintiffs.

192 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

State of Illinois, } ss.
County of Cook. }

Vincent O'Brien, being first duly sworn, on oath deposes and says that he is attorney of record in the above entitled cause for certain of the defendants whom he alone represented at the trial of said cause before the Honorable Michael L. Igoe and the jury impaneled to try the issues therein.

Affiant further says by way of supplement to his affidavit dated March 24, 1944, attached as Exhibit A to the motion of defendants for a new trial, etc., now pending and undetermined herein, that before delivering to the Deputy Marshal the said exhibits marked Warner's Exhibits 4 to 31, respectively, affiant checked the same and put them in numerical order and that said Warner's
193 Exhibits 4 to 31, inclusive, were the only papers of any kind which he delivered to the said Deputy Marshal for any purpose.

Affiant further says that he did not check or otherwise examine the papers or documents delivered by plaintiffs' counsel to the Deputy Marshal for transmission to the jury room and that he did not then and does not now know what was contained amongst the papers and documents so delivered by plaintiffs' counsel.

Affiant further avers that he has no information or knowledge as to how or under what circumstances the document marked Plaintiffs' Exhibit 123 for Id. got to the jury room during the deliberations of the jurors, nor does he have any recollection of Mr. Adcock's requesting that defendants' counsel permit him to examine said document, as averred in the affidavit of Thomas C. McConnell annexed to one of the plaintiffs' briefs filed in the above entitled cause, nor did he see Mr. Korfist hand said document to Mr. Adcock, as averred in the latter affidavit.

Vincent O'Brien.

Subscribed and sworn to before me this 26th day of April, 1944.

Kirsten Sorensen,
Notary Public.

(Seal)

194 IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—4525)

AFFIDAVIT.

State of Illinois }
County of Cook } ss.

Michael T. Organ, being first duly sworn, on oath deposes and says that he is a resident of the county and state aforesaid; that he is a court reporter connected with E. A. Eulass & Company, of 155 North Clark Street, Chicago, Illinois, who were the court reporters for the defendants in the trial of the above matter. And affiant further states:

1. Affiant has read what purports to be a printed copy of the affidavit of Mr. Thomas C. McConnell of April 13, 1944, as it appears following and as a part of a printed document entitled "Brief of Plaintiffs in Reply to Defendants' Motions for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial and the Supporting Briefs Filed by All Parties Other Than Warner Bros. Pictures, Inc."

2. Affiant did talk to Mr. McConnell as stated in Mr. McConnell's affidavit about what the transcript of defendants showed with respect to a document marked Plain-
195 tiffs' Exhibit 123 for identification. Affiant then told

Mr. McConnell that the defendants' transcript showed substantially the same as plaintiffs' transcript with respect to Plaintiffs' Exhibit 123 for identification and Plaintiffs' Exhibit 123-A for identification, as stated in said affidavit of Mr. McConnell, except that the words quoted in Mr. McConnell's affidavit from plaintiffs' transcript were in parentheses in defendants' transcript; that the words in parentheses were not a transcript of shorthand notes but covered merely the reporter's interpretation as to the admission or rejection of said documents. Affiant also told Mr. McConnell at said conversation that defendants' counsel had theretofore told affiant that the transcript was wrong in showing that said documents had been received in evidence because it was their understanding that the court did not admit said documents; and further affiant saith not.

Michael T. Orga[illegible].

Subscribed and sworn to before me this 25th day of April, A. D. 1944.

Bessie C. Breyer,
Notary Public.

(Seal)

196 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—4525) * *

STIPULATION AS TO CERTAIN EVIDENCE RELATING TO THE JOINT AND SEVERAL MOTION FOR NEW TRIAL BY THE DEFENDANTS.

It is hereby stipulated by counsel for all parties, that if two or more of the jurors in the trial of the above entitled cause before Honorable Michael L. Igoe, one of the judges of said court, in his courtroom at the United States Courthouse, Chicago, Illinois, the trial of which case before the court and jury commenced on February 14, 1944, and was concluded on March 9, 1944, when the jury rendered their sealed verdict, were called and sworn to testify to the truth before the court, they would testify, in substance, that on the 9th of March, 1944, after the court had in-
197 structed the jury and after the jury had retired to the jury room to deliberate upon their verdict, there was present in the jury room in the presence of the jury, among

other documents, a certain document marked for identification Plaintiffs' Exhibit 123, a true copy of which is attached hereto; that prior to arriving at their verdict, the said jurors saw, observed and examined the contents of said document while it was so present in the jury room as aforesaid. The foregoing statement as to what the jurors would testify shall have the same force and effect as if the jurors had appeared in court in person and were sworn and testified in substance as above set forth.

Dated April 25, 1944.

Thomas C. McConnell,
Attorney for Plaintiffs.

Edmund D. Adcock,
Attorney for Defendants Paramount Pictures, Inc. and Balaban & Katz Corporation.

Miles G. Seeley,
Attorney for Defendants RKO Radio Pictures, Inc., Loew's Inc., Twentieth Century-Fox Film Corporation, and Vitagraph, Inc.

Vincent O'Brien,
Attorney for Defendants Warner Bros. Pictures, Inc., Warner Bros. Circuit Management Corporation and Warner Bros. Theatres, Inc.

Copy of Pl. Ex. 123 id. attached to the foregoing stipulation and referred to therein, as "Exhibit A" to the affidavit of Miles G. Seeley, a part of and accompanying the motion for new trial. See page — herein).

262 And on the same day, to-wit, the 11th day of October, 1944, there was filed in the Clerk's office of said Court a certain Reporter's Transcript, Portions of which are, in words and figures followin, to-wit:

263 May 19, 1944—

Stipulation in open court at hearing on motion for judgment notwithstanding the verdict and, in the alternative, for a new trial, that the affidavits filed by the defendants with and in support of and accompanying their motion for new trial, counter-affidavits filed by plaintiffs and the counter-affidavits filed by the defendants in reply to such counter-affidavits of the plaintiffs, be treated as in evidence, with the same force and effect as if the makers of such affidavits appeared and testified, subject to the objections of plaintiffs as to the affidavit of Vincent O'Brien wherein there is set forth conversation he had with one of the jurors after the verdict, as is shown by the following from the stenographic transcript of the proceedings: (P. 2834)

"Mr. Adcock: * * *

Now, your Honor, I would like to take up this matter of Plaintiffs' Exhibit 123 for identification, and as I have stated one of the grounds for a motion for a new trial is that that exhibit was in the jury room before the jury and read and examined by certain of the jurors, this exhibit which was never received in evidence.

* * * * * *

The stipulation, has your Honor read that? Suppose I read it.

'Stipulation As To Certain Evidence Relating To The Joint And Several Motion For New Trial By The Defendants.

It is hereby stipulated by counsel for all parties, that if two or more of the jurors in the trial of the above entitled cause before Honorable Michael L. Igoe, one of the judges of said court, in his courtroom at the United States Courthouse, Chicago, Illinois; the trial of which case before the court and jury commenced on February 14, 1944, and was concluded on March 9, 1944, when the jury rendered their sealed verdict, were called and sworn to

264 testify to the truth before the court, they would testify, in substance, that on the 9th of March, 1944, after the

court had instructed the jury and after the jury had retired to the jury room to deliberate upon their verdict, there was present in the jury room in the presence of the jury, among other documents, a certain document marked for identification Plaintiffs' Exhibit 123, a true copy of which is attached hereto; that prior to arriving at their verdict, the said jurors saw, observed and examined the contents of said documents while it was so present in the jury room as aforesaid. The foregoing statement as to what the jurors would testify shall have the same force and effect as if the jurors had appeared in court in person and were sworn and testified in substance as above set forth.

Dated April 25, 1944.'

Then there follows, your Honor, a copy of the exhibit * * *.

Since the motion for a new trial was filed, and probably three or four weeks ago this stipulation was made between counsel,—so the question as to whether or not the exhibit was before the jury is no longer a matter of dispute. And we want to offer in evidence, I think we should, there were a number of counter-affidavits filed,—we want to offer in evidence this stipulation, which has been filed in court. * * *

We also want to offer in evidence the affidavits that were filed in support of the motion for new trial and the counter affidavits which were filed later in opposition to those which were filed by the plaintiff.

Mr. McConnell: I am willing that they be considered and be in the record.

Mr. Adcock: And have the same force and effect as if the makers thereof appeared and testified.

Mr. McConnell: With this exception: There were affidavits here by Mr. O'Brien which I am going to raise objection to.

The Court: That is the affidavit about his visit to a witness?

265 Mr. McConnell: The affidavit in which he states what some juror told him.

The Court: Yes.

Mr. Adcock: As to the deliberations.

Mr. McConnell: Well, anything the jury said is hearsay when repeated by Mr. O'Brien.

Mr. Adcock: Well, I should think, so far as that portion

of the affidavit is concerned, why we don't care about it, do we?

Mr. O'Brien: Well, wait until I hear what Mac has to say. I don't know.

* * * * *

Mr. O'Brien: Judge, on the record, as I understand it, Mr. McConnell, the various affidavits and counter affidavits submitted with the motion and in opposition to the motion may be considered as being in evidence with the same effect as if they had testified here, with relation to the motion for new trial, except the part of my affidavit wherein I relate the conversation which I had with the jury, which Mr. McConnell regards as hearsay, may be excluded on that basis, that it is not competent evidence.

* * * * *

Mr. McConnell: Let us make the record this way. I make a motion to strike from the O'Brien affidavit Mr. O'Brien's relation of what Valles told him, as hearsay.

The Court: Outside of that, it may go in.

Mr. O'Brien: That is all right. I understand Mr. McConnell has that objection, but I want to make this point for the record, because this is a record,—we have a right in connection with the motion for new trial to assign such cause as I have for invoking a hearing and in-
266 quiring into the facts. I don't want the record to be in such shape that that statement is stricken for all purposes. I am willing to say, in view of the circumstances as they now exist, that I would have no occasion now than when they were to testify. I don't know whether I make that clear or not.

Mr. McConnell: You don't want to be accused of not stating the fact, is that it?

Mr. O'Brien: No, that is not it. I mean that at the time the motion for new trial was presented that was the only information which I had, perhaps which any of the people had, and, in the motion for new trial, I asked the Court to hold a hearing to find out what the fact was, and that was my basis for doing so. I don't offer it now or then as evidence, but I offer it as the reason for requesting the Court to conduct a hearing on the matter.

The Court: When did you make that motion?

Mr. O'Brien: In the written motion for new trial.

The Court: But outside of that you have not?

Mr. O'Brien: No, because subsequently Mr. McConnell

stipulated that if the jurors were called here and if we did have the hearing, that two or more of them would testify that that exhibit was in the jury room.

The Court: Yes.

Mr. McConnell: I do not stipulate, though, that Valles would testify to what you said in your statement. I did not stipulate to that at all.

The Court: I understand that. You have stipulated that if the jurors were brought in they would testify that the exhibit was in the jury room,

Mr. McConnell: That is right.

Mr. Adcock: In other words, the stipulation accomplished what would have been accomplished by the hearing you asked.

267 Mr. McConnell: But I don't want in the record a hearsay statement of a juror as to what he considered about this document. * * *"

498 And afterwards, to wit, on the 1st day of June, 1944, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

199 In the District Court of the United States.

* * (Caption—4525) * *

Thursday, June 1, 1944.

Present: Honorable Michael L. Igoe, District Judge.

This cause having been heretofore taken under advisement on the motion of the defendant for judgment notwithstanding the verdict and in the alternative for a new trial, the Court having heard the oral arguments of counsel and considered the briefs filed herein and being fully advised in the premises

It Is Ordered that said motion be and it is hereby overruled.

200 And afterwards on, to wit, the 18th day of August, 1944, came the Defendants, RKO Radio Pictures, Inc. et al., by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal in words and figures following, to wit:

201 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

Florence B. Bigelow, et al., *Plaintiffs,* vs. RKO Radio Pictures, Inc., a corporation, et al., *Defandants.*	No. 4525.

NOTICE OF APPEAL.

Now come RKO Radio Pictures Inc., a corporation, Loew's, Incorporated, a corporation, Twentieth Century-Fox Film Corporation, a corporation, Paramount Pictures Inc., a corporation, Balaban & Katz Corporation, a corporation, Vitagraph, Inc., a corporation, Warner Bros. Pictures, Inc., a corporation, Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation, defendants in the above entitled cause, and the said defendants and each of them do hereby give notice that they and each of them appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the entire final judgment entered herein on March 14, 1944, on the verdict of the jury, against them and each of them and in favor of the plaintiffs in the sum of Three Hundred Sixty Thousand Dollars ($360,000) and costs of suit, including the orders of June 1, 1944 overruling the motion of the defendants for judgment in favor of defendants notwithstanding the verdict of the jury, and the mo-

tion of defendants in the alternative for a new trial, which motions were filed March 24, 1944.

RKO Radio Pictures, Inc.,
Loew's, Incorporated and
Twentieth Century-Fox Film Corporation,
Defendants.

Mayer, Meyer, Austrian & Platt,
By Miles G. Seeley,
Their Attorneys.

Paramount Pictures, Inc., and
Balaban & Katz Corporation,
Defendants.

Adcock, Fink and Day,
By Edmund D. Adcock,
Their Attorneys.

Vitagraph, Inc., Warner Bros. Pictures, Inc.,
Warner Bros. Circuit Management Corporation and Warner Bros. Theatres, Inc.,
Defendants.

Defrees, Fiske, O'Brien & Thompson,
By Vincent O'Brien,
Their Attorneys.

(Attached to the foregoing is the following certificate):

202 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 19th day of August, 1944, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Thomas C. McConnell
135 South La Salle Street
Chicago (3), Illinois

Roy H. Johnson,
Clerk.

(Seal)

221 And afterwards on, to wit, the 11th day of October, 1944, came the Defendants-Appellants by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points in words and figures following, to wit:

222 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

STATEMENT OF POINTS RELIED ON AND OF ERRORS ASSERTED AND INTENDED TO BE URGED BY DEFENDANTS-APPELLANTS ON THEIR APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Defendants-Appellants' Statement of Points relied on and of errors asserted and intended to be urged on their appeal to the United States Circuit Court of Appeals for the Seventh Circuit, is as follows:

1. The lower court erred in denying the motions of the several defendants made and presented at the conclusion of the plaintiffs' evidence, that the court instruct the jury to find the defendants and each of them not guilty, and thereafter in refusing to enter judgment for the defendants notwithstanding the verdict, because—

(a) The evidence introduced by the plaintiffs failed to make out a prima facie case against the defendants or any of them as concerns all or any of the allegations of the complaint.

(b) No facts were proven from which the jury could find that any conspiracy existed.

(c) There was no showing that the defendants or any of them were parties to or participated or joined in any conspiracy or did any act pursuant to a conspiracy which caused or resulted in any injury or damage to the plaintiffs' business or to their property.

(d) There was insufficient evidence of the essential elements of plaintiffs' damage, if any, so that there was no basis on which the jury could determine the fact of damage or could measure such damages in terms of money under applicable rules of law.

2. The court erred in overruling and denying the mo-

tions of the several defendants made at the close of all
223 the evidence that the plaintiffs be required to elect which of two theories of damages they relied on, the court having erroneously permitted the plaintiffs to offer evidence with respect to the following two theories of damages:

(a) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from July 28, 1937 to July 28, 1942 (the date of the institution of the suit) were less than they would have been had the gross receipts from admissions and the film rental expense of the Jackson Park Theatre been equal to the amount of the gross receipts from admissions and film rental expense of the Maryland Theatre of the defendant Balaban & Katz Corporation (located approximately a mile and a half from the Jackson Park Theatre and in a different trade center) for said five year period.

(b) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from July 28, 1937 to July 28, 1942 were less than five times the average yearly profits of the said theatre for the four year period prior to said July 28, 1937, eliminating estimated bank night receipts for the year 1936;.

and the court thereafter erred in refusing to grant defendants' motion for new trial because of such erroneous overruling and denying of the said motions.

3. The court erred in overruling and denying the several motions of the defendants made at the close of all the evidence to strike all of the evidence of the plaintiffs with respect to proof of damages and thereafter in refusing to enter judgment for the defendants notwithstanding the verdict or in the alternative grant a new trial because of such erroneous overruling and denying of said motions to strike. The evidence sought to be stricken by said motion related particularly to Plaintiffs' Exhibits 47, 48 and 49 and to the following evidence:

Richard Salkin, Manager of Jackson Park Theatre from 1927 to date he testified—Pages 158 to 166, 174, 175, 181 to 188, 238 to 247, 330 to 356.

A. B. Butler, an Accountant—Pages 713 to 787.

224 4. The court erred in denying and overruling the several motions of the defendants made and presented at the close of all the evidence that the court direct the jury to bring in a verdict for the defendants and each of

them, and thereafter in refusing to enter judgment for the defendants notwithstanding the verdict, because—

(a) Upon the facts and the law the plaintiffs had no right to relief.

(b) No facts were proven from which the jury could reasonably find that any conspiracy, monopoly or monopolistic practices existed.

(c) The evidence offered and received on behalf of all defendants showing that no conspiracy existed was not controverted.

(d) No facts were proven from which the jury could reasonably find that the defendants, or any of them, had restrained interstate trade or commerce unreasonably.

(e) Plaintiffs did not show that the defendants or any of them were parties to or participated or joined in any conspiracy or did any act pursuant to a conspiracy which caused or resulted in any injury or damage to the plaintiffs' business or to their property.

(f) The evidence was insufficient in law to show or establish the essential elements of plaintiffs' damage, if any, so that there was no basis on which the jury could measure such damage or damages in terms of money under applicable rules of law.

(g) The evidence received on behalf of plaintiffs with respect to alleged loss of profits in the operation of the Jackson Park Theatre was too conjectural, speculative and remote to form a basis for the assessment of damages.

(h) The evidence received on behalf of plaintiffs tending to show prospective profits of Jackson Park Theatre based on a comparison of the business done by the Maryland Theatre was too conjectural and speculative in that there was no evidence justifying the use of the Maryland Theatre as a basis of comparison with the Jackson Park Theatre.

(i) The uncontradicted evidence shows that plaintiffs are estopped to complain of the so-called "system of release", described in their complaint and alleged to have resulted from a conspiracy among the defendants by reason of the plaintiffs being in pari delicto in that with knowledge of the nature and effect of such a "system" they participated therein and enjoyed the benefits thereof by entering into film license agreements with certain defendants according the plaintiffs' theatre a run under said "system" together with clearance over competing theatres.

holding such competing theatres in later runs under the same "system".

225 5. The court erred in denying and overruling the motion of the defendants and each of them for judgment notwithstanding the verdict and in overruling and denying the alternative motions of the defendants and each of them for a new trial.

6. The court erred in entering judgment for the defendants on the verdict of the jury because there was no evidence before the jury upon which the jury could base a verdict for the plaintiffs. The verdict was contrary to the weight of the evidence. There was no evidence of any injury or fact of damage to the plaintiffs by virtue of any acts of the defendants, and there was no evidence by which the jury could measure in dollars any claimed damage to the plaintiffs by any acts of the defendants or any of them.

7. The court erred in overruling and denying the motion of the defendants and each of them for a judgment notwithstanding the verdict of the jury because—

(a) The motion of the defendants and each of them at the conclusion of the plaintiffs' case to direct the jury to return its verdict in favor of these defendants should have been sustained.

(b) The motions of these defendants and each of them made at the close of all the evidence in said cause to direct the jury to return a verdict in favor of the defendants should have been sustained.

(c) The evidence offered and received in behalf of plaintiffs herein most favorably considered did not and does not support the verdict of the jury in favor of the plaintiffs and against the defendants.

(d) The evidence offered and received in behalf of these defendants warranted a directed verdict in favor of the defendants at the close of all the evidence.

226 (e) The defendants maintained the burden of proof resting upon them as a matter of law of establishing their affirmative defenses set up by them in their answers and amendments thereto.

(f) Plaintiffs failed to prove any injury to them or to the Jackson Park Theatre by reason of the several matters complained of.

(g) Plaintiffs failed to offer any evidence to show what the operation performance of the Jackson Park Theatre

would have been without the system complained of or in free and open competition.

(h) The testimony given by plaintiffs' witnesses Richard Salkin and A. B. Butler with respect to injury and damage was inadmissible and too remote and speculative. Their evidence insofar as it related to earnings which in the witnesses' opinion would have resulted had the Jackson Park Theatre operated in C week, should have been stricken because the operation in C week would have been within the system with respect to which the plaintiffs complained.

(i) There was no evidence that any event transpired subsequent to the plaintiffs' acquisition of Jackson Park Theatre as the result of or pursuant to any conspiracy or other illegal act which would have caused the alleged drop in profits of the Jackson Park Theatre.

(j) The evidence shows without contradiction that the plaintiffs were in pari delicto with the defendants in that they knowingly and voluntarily sought to and did obtain the benefits and advantages of the very system of releasing motion pictures of which they complained.

See testimony of.

227 8. The court erred in giving the following instruction requested by plaintiffs over the objections of the defendants, and in refusing to grant a new trial because of such erroneous instruction:

"The court instructs the jury that if you find that there was a conspiracy to fix minimum admission prices, then the fact that there were business reasons which made such fixing of admission prices desirable to those defendants which you find to have participated therein, if you so find, or the fact that for other reasons the arrangements might be deemed to have desirable consequences, would be no legal justification for such fixing of prices. And if you further find that the so-called Chicago System of Release is an inseparable part of a price fixing scheme between the defendants, or some of them, then the contracts and clearance schedules incorporating the same therein are invalid and illegal and the plaintiffs are entitled to recover for any damages proximately caused thereby."

The said instruction was erroneous for the following reasons:

(1) No purported conspiracy to fix minimum admission

prices is within the issues in this case as made by the pleadings of the parties.

(2) The evidence conclusively shows that the plaintiffs were not injured in their business or property by any fixing of minimum admission prices and therefore, as a matter of law, were not entitled to have the claimed illegality of any supposed fixing of minimum admission prices submitted to the jury.

(3) The instruction was prejudicial to the defendants because it tended to confuse the jury as to the issues which they were to decide and to deprive the defendants of their right to have the jury consider the reasonableness of the so-called Chicago System of Release as it affected the plaintiffs' business, under clear and applicable instructions as to the law.

(4) The fact that the so-called Chicago Release System might or might not have been a part of a conspiracy to fix minimum admission prices was irrelevant to the question whether said so-called Chicago Release System in and of itself was an unreasonable restraint of trade as it affected the plaintiffs' business.

228 (5) The said instruction directed the jury to find for the plaintiffs in complete disregard of the defense of estoppel pleaded by them and in that respect was inconsistent with and contradictory to the instruction given by the court with respect to such defense of estoppel.

9. The court erred in giving the following instruction requested by plaintiffs over the objections of the defendants, and in refusing to grant a new trial because of such erroneous instruction:

"The court instructs the jury that the owner of a copyright product may not by virtue of his copyright condition his license so as to tie to the use of the copyright product the use of other products which lie outside of the monopoly of the copyright license, or condition the license so as to control conduct by the licensee not embraced in the copyright monopoly or upon the maintenance of minimum admission prices which the public shall pay for an entertainment which includes theatres other than the particular picture licensed."

The said instruction was erroneous for the following reasons:

(1) There was no evidence that any license under copyright granted by any defendant in this case was conditioned

so as to tie to the use of the copyrighted films which were the subject matter of such license the use of any other product.

(2) There was no evidence that any license under copyright granted by any defendant in this case was conditioned so as to control conduct by the licensee not embraced in the copyright monopoly.

(3) There is no evidence in this case that any license under the copyright granted by any defendant in this case was conditioned upon the maintenance of minimum admission prices which the public should pay for an entertainment which included features other than the particular picture licensed.

(4) The owner of a copyrighted film is not deprived of its right to specify in any license to exhibit such film the minimum admission prices to be charged at such exhibition by the fact that the exhibitor or licensee may choose, without agreement with or compulsion by the licensor, to exhibit said film as part of a program including other entertainment.

(5) The fixing of minimum admission prices was not a proper issue to be presented to the jury for the reasons set forth in sub-paragraphs 1, 2 and 3 of paragraph 8 hereof, supra.

229 10. The court erred in giving the following instruction requested by plaintiffs over the objections of the defendants, and in refusing to grant a new trial because of such erroneous instruction:

"You are also instructed that if you find that the plaintiffs had merely bought film from the defendants under contracts because of a business necessity and that the plaintiffs had not with a knowledge of the defendants' purpose to monopolize helped to build up a monopoly, then the plaintiffs are not estopped to complain against the defendants."

The said instruction was erroneous for the following reasons:

(1) The fact that the plaintiffs might have bought or licensed film from the defendants because of business necessity would not excuse their having obtained in connection therewith, by provisions in their license agreements, priority of run and clearance over competing theatres, and being thereby estopped to complain that priority and

clearance over their theatre were provided for in the film license agreements of the defendant exhibitors.

(2) Whether or not the plaintiffs had knowledge of the defendants' purpose is immaterial, since the plaintiffs must be charged with knowledge of the necessary effect of priorities of runs and clearances obtained by them over competing theatres, which necessary effect was to create a monopoly in the plaintiffs' theatre.

(3) The uncontradicted evidence shows, in addition to the facts shown in paragraphs (1) and (2) immediately above, that the plaintiffs insisted that the Hamilton Theatre be moved back behind the run in which the Jackson Park Theatre was licensed to exhibit pictures and that said request was complied with by all of the distributors, including the defendant distributors.

(4) The evidence shows that the plaintiffs purchased the Jackson Park Theatre with the knowledge of the position in which it had been licensed to play and with the knowledge of the fact that it was licensing pictures under the same system claimed by the plaintiffs to be illegal.

(5) The said instruction deprived the defendants of the right to a fair consideration by the jury of the issue of estoppel of the plaintiffs to complain of the so-called Chicago System of Release.

230 11. The court erred in giving the following instruction requested by plaintiffs over the objections of the defendants and in refusing to grant a new trial because of such erroneous instruction:—

"The court further instructs the jury that if you find a price fixing combination to exist between the defendants, or some of them, then the fact, if you find it to be a fact, that the prices so fixed were reasonable does not make such fixing of prices lawful."

The said instruction was erroneous for the following reasons:

(1) No purported conspiracy to fix minimum admission prices is within the issues in this case as made by the pleadings of the parties.

(2) The evidence conclusively shows that the plaintiffs were not injured in their business or property by any fixing of minimum admission prices and therefore, as a matter of law, were not entitled to have the claimed illegality of any supposed fixing of minimum admission prices submitted to the jury.

(3) The instruction was prejudicial to the defendants because it tended to confuse the jury as to the issues which they were to decide and to deprive the defendants of their right to have the jury consider the reasonableness of the so-called Chicago System of Release as it affected the plaintiffs' business, under clear and applicable instructions as to the law.

12. The court erred in giving the following instruction requested by plaintiffs over the objections of the defendants, and in refusing to grant a new trial because of such erroneous instruction:—

"The court instructs the jury that if you find from the evidence in this case a combination or conspiracy to monopolize or unreasonably restrain the competition in the licensing or exhibition of motion pictures, or if you find a combination or conspiracy to fix minimum admission prices in theatres exhibiting motion pictures licensed by the defendants, or some of them, and if you further find that as a proximate result of any such combination or conspiracy the plaintiffs are damaged, then in such case your verdict will be for the plaintiffs."

231 The said instruction was erroneous for all the reasons stated with respect to the instruction quoted in the preceding paragraph.

13. The court erred in giving the following instruction requested by plaintiffs over the objections of the defendants, and in refusing to grant a new trial because of such erroneous instruction:—

"The court instructs the jury that if they find that the defendants or some of them have entered into a combination to fix admission prices and that, as an integral part thereof, runs and clearances are set up for the exhibiting of motion pictures under a so-called System of Release; and that as a result thereof the plaintiffs are unable to obtain motion pictures for exhibition in their theatre until after such pictures have been shown by the competitive theatres owned by Warner Bros. Theatres, Inc., or by Balaban & Katz Corporation, and that as a proximate result thereof the plaintiffs are damaged, then your verdict shall be for the plaintiffs even though the plaintiffs did not attempt to exhibit motion pictures at prices less than the minimum admission prices fixed in plaintiffs' contract with the defendant distributors."

The said instruction was erroneous for all the reasons

set forth with respect to the instruction quoted and objected to in paragraph 8.

14. The court erred in giving the following instruction requested by plaintiffs over the objections of the defendants and in refusing to grant a new trial because of such erroneous instruction:—

"The court instructs the jury that only in the event that you find that there exists no conspiracy or combination to fix minimum admission prices, or no unreasonable restraint of trade by the defendants by virtue of a Chicago System of Release, will you have occasion to consider whether or not the plaintiffs demanded and sought to obtain a playing position in 'C' week."

The said instruction was erroneous for all the reasons set forth with reference to the instructions quoted in 232 paragraph 8 above, and for the further reason that the defendants had a right to have the jury consider whether or not the plaintiffs demanded and sought to obtain a playing position in C week in passing upon the issue as to whether or not the so-called Chicago System of Release was an unreasonable restraint of trade, and also upon the issue as to whether or not the plaintiffs suffered any injury to their business or property by reason thereof.

15. The court erred in giving the said several above quoted instructions wherein reference is made to the supposed fixing of minimum admission prices because the said instructions when considered together unduly emphasized and repeated the subject of minimum admission prices although such subject was not properly in issue in the case.

16. The court erred in refusing and it was an abuse of discretion for the court to refuse to grant the motion of the defendants for a new trial because there was present in the jury room in the presence of the jury, among other documents, a certain document marked for identification Plaintiffs' Exhibit 123, never received in evidence, which said document prior to arriving at their verdict the jurors saw, observed and examined while it was so present in the jury room, which said document reached and was present in the jury room through some accident and was prejudicial to the defendants and each of them, and which document, comprising a list of about 1500 theatres in all parts of the United States in the operation of which defendant Paramount Pictures Inc. or subsidiaries thereof had an interest, might have led the jury to believe in the absence

of any evidence explanatory thereof that said Para-
233 mount Pictures Inc. and its subsidiaries had such buying power that it might have dictated to defendant distributors of motion picture films with respect to the terms and conditions upon which such films should be licensed by such distributors for exhibition in theatres operated by the defendant Balaban & Katz, the court having refused to permit the said document, immaterial and irrelevant to any issues in the case, to be received in evidence when offered by plaintiffs on objection of defendants.

17. The court erred in refusing to enter judgment for the defendants or in the alternative to grant a new trial, because of the following:

One of the instructions given by the court relates to the plaintiffs' two theories of the measure of damages and is as follows:

"Plaintiffs seek to recover damages for the alleged acts of defendants on one of two theories, as follows:

(1) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from July 28, 1937 to July 28, 1942 were less than they would have been had the gross receipts from admissions and the film rental expense of the Jackson Park Theatre been equal to the amount of the gross receipts from admissions and film rental expense of the Maryland Theatre of the defendant Balaban & Katz Corporation for said five year period.

(2) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from July 28, 1937 to July 28, 1942, were less than five times the average yearly profits of said theatre for the four year period prior to said July 28, 1937, eliminating estimated 'Bank Night' receipts for the year 1936.

The jury are instructed that if they find from a preponderance of all the evidence that plaintiffs have been injured by the alleged acts of defendants, they must choose one or the other of said two theories of determining damage or the amount of damages.

If the jury selects the first theory of determining damages as above mentioned, they must first find from a preponderance of all the evidence what amount of the gross receipts from admissions and amount of expense of
234 film rental of the Maryland Theatre for the said five year period from July 28, 1937 to July 28, 1942, was

derived or resulted from the operation of the Maryland Theatre under normal conditions of free and open competition and not from or as the result of the operation of said theatre in the playing position, under clearances and minimum admission prices allegedly provided by the so-called system of release and under double feature policy alleged and claimed by the plaintiffs to have been established, maintained and continued by defendants through conspiracy and unlawful agreement, and the jury shall use said gross admissions amount and said film rental expense so to be found by them as the factor from which to calculate the damages for said five year period.

If the jury selects the second theory above mentioned to determine and fix damages, they must first find from a preponderance of all the evidence what if any portion of the yearly average profits of the operation of the Jackson Park Theatre for the four year period prior (eliminating certain 'Bank Night' receipts) to said July 28, 1937 was derived from operation under conditions of free and open competition and not from operation in the playing position, under the clearances and minimum admission prices of the so-called system of release and under double feature policy which plaintiffs allege and claim defendants by conspiracy established, maintained and continued, and the jury shall then use such, if any, portion of said yearly average as the factor from which to determine the damages sought to be recovered by plaintiffs."

Plaintiffs' Exhibit 48 sets forth the amount of damage as claimed by the plaintiffs to be shown by their evidence based upon the two theories mentioned in the above quoted instruction. According to theory numbered 1, the total amount claimed by the plaintiffs under said Plaintiffs' Exhibit 48 was $115,982.34. Under the theory numbered 2, as stated in said instruction, the total amount claimed by the plaintiffs under said exhibit was $125,659.99. Under said instruction, if the jury concluded that the plaintiffs were injured by the acts of the defendants, they were required to use one or the other of said two theories. The jury's verdict assessed plaintiffs' damages at $120,000, which is more than the damages claimed under theory numbered 1, and is approximately $5,000 less than the amount claimed under theory numbered 2, according to Plaintiffs' Exhibit 48. Obviously, the jury elected to assess plaintiffs' damages under theory numbered 2. There

was no evidence offered or before the jury from which they could determine the yearly average profits of the Jackson Park Theatre for the four year period prior to July 28, 1937, under conditions of free and open competition and not from operation under the conditions complained of by plaintiffs. The jury therefore could not have used any factor from which they could determine the damages claimed for the five years involved in the suit, under theory of damages numbered 2 referred to in said instruction.

18. The court erred in rulings with respect to the admission or rejection of evidence and thereafter erred in refusing to grant a new trial because of such erroneous rulings, as is shown by the following:

A. John E. Bloom, one of the partners plaintiffs in the case, was permitted to testify over objections of the defendants. The questions and answers and objections are as follows: (Rec. 57-58)

"Q. Have you been ready and willing and able at all times during your ownership of this theatre to pay an additional film rental for a prior run?

Mr. Seeley: I object to that, in view of his testimony that he had nothing whatever to do with running the theatre, but delegated all those functions to his agent.

The Court: He may answer that question. The objection is overruled.

A. Yes, we did.

Mr. McConnell: Q. Well, were you ready, willing and able?

A. Yes, we were. We discussed that.

Q. And did you tell Mr. Salkin that?

236 Mr. Seeley: I object to that.

The Court: He may answer that.

A. Yes, we did."

B. On direct examination the witness Richard Salkin, then and since 1927 manager of the plaintiffs' theatre, and a witness for the plaintiffs, was asked the following questions and made the following answers, and the court made the following rulings (Rec. 185-88):

"Q. I show you a document marked for identification Plaintiffs' Exhibit 44, and direct your attention to the rental as shown for the Maryland Theatre for film during certain years. Do you see those figures?

The Witness: A. Yes, sir.

Q. Will you read those figures for the respective years?
A. For the year of 1936, $40,414.11
For the year of 1937, $43,515.00
For the year of 1938, $41,478.93
For the year of 1939, $40,42[illegible]90
For the year of 1940, $42,448.31
For the year of 1941, $40,104.99
For the year of 1942, $38,395.36.

Q. Now, Mr. Salkin, with those figures in mind, were you, as manager of this theatre and acting for the four plaintiffs in this case, ready, able and willing in all those years that you have mentioned to pay more rental for pictures in that same run, in that C run, for the Jackson Park?

Mr. O'Brien: Well, I object to that again. As a matter of law it does not make any difference. The same objection as yesterday.

The Court: You had a different objection yesterday. You had objection yesterday that he had no basis upon which to make it. He now claims that he has a basis. The objection is overruled.

Mr. Adcock: Further objection that those figures are gross figures for the year and that is taken on a different product altogether as rented or that are licensed. I don't see how that can be of any materiality at all.

The Court: The objection is overruled. He may answer the question.

237 Mr. McConnell: Read the question to the witness, please.

The Witness: Yes, sir.

The Court: He said the answer is, "yes, sir."

Mr. McConnell: Q. Now, will you look at the admissions of the Maryland as shown in those respective years and will you read those, please?

A. For the year of 1936, $173,448.50
For the year of 1937, $147,149.35
For the year of 1938, $124,339.09
For the year of 1939, $130,194.54
For the year of 1940, $127,986.01
For the year of 1941, $120,605.81
For the year of 1942, $130,691.21.

Q. Now, from your experience in the operation of the Jackson Park Theatre, and from your experience of your entire business like in this industry, can you state whether

or not, if the Jackson Park had enjoyed a C run during the period mentioned, it would have been able to obtain the same, at least the same admissions at the Jackson Park?

Mr. O'Brien: I object to that, your Honor, on the ground that that, under the cases, is far too remote, conjectural and speculative, as against the well-defined type of proof there has to be in this proceeding.

The Court: I will sustain the objection.

Mr. McConnell: If the Court please, I would like to be heard on that, because there is a case that has ruled squarely on that sort of proof, holding it is competent, the estimate of the party who has dealt with the business, who is familiar with it, for what it is worth. The weight may not be as great as some other proof, but it is the best proof of which the question is susceptible and the cases hold it is competent. I have a case here directly in point.

The Court: Suppose after we adjourn we look into his case. You can ask some other questions now, can't you?

Mr. McConnell: Yes.

The Court: After the jury retires we will look into that.

Mr. McConnell: And your Honor will withhold your ruling?

The Court: Yes, I will withhold the ruling until that time."

238 After argument on the matter of the objections, the court made the following ruling (Rec. 301):

"The Court: I am going to permit the question to be asked. It is going to be limited to the period covered by the statute of limitations, which is from five years before the date of the filing of this suit."

Later the witness Salkin was recalled for further direct examination and the following took place (Rec. 330-1):

"Q. Calling your attention to the subject of your examination yesterday with reference to admissions of the Maryland theatre, do you recall reading 'Admissions' in evidence?

A. Yes, sir.

Q. Admission figures on the Maryland theatre?

A. Yes, sir.

Q. Now, this covers the period from July 28, 1937 to July 28, 1942. If, during that period, you

had been able to obtain a C run for the Jackson Park Theatre, would you, or would the Jackson Park Theatre, rather, have been able to have obtained as much admission as is shown in the Maryland theatre's figures during that same period of time?

A. Yes, sir.

Mr. Seeley: I take it there is no point repeating the objection.

The Court: No. It is understood that all the objections made yesterday, both in the presence of the jury and outside the presence of the jury, are now repeated.

Mr. O'Brien: And those of this morning.

The Court: Yes, sir.

Mr. McConnell: Q. Have you the question in mind now?

The Witness: A. Yes, sir.

Q. Will you answer the question?

A. Yes, sir."

239 On the subject of the preceding question and answer, the witness was cross-examined (Rec. 332-357). Prior to that time it appeared by the evidence that the Jackson Park Theatre had exhibited pictures in first week of general release for many years, at least from 1927 until the present time, and the Maryland Theatre during the same period had exhibited pictures in what was called C pre-release week, which is the week preceding first week of general release, the Maryland being located on 63rd Street near Cottage Grove Avenue, the Jackson Park Theatre near the corner of 67th Street and Stony Island Avenue, about a mile east and a half mile south of the Maryland. The seating capacity of the Maryland Theatre is about 1500 seats and the Jackson Park Theatre about 1420 seats. The following is the cross-examination of the witness Salkin on the subject above mentioned (Rec. 332-357):

240 "*Cross-Examination by Mr. Seeley.*

Q. Mr. Salkin, as I understand it, the opinion that you gave just before we had the recess was based upon supposing that from July, 1937, until July, 1942, the Jackson Park Theatre had played in C week. That is correct, is it not—as the basis of your answer?

The Witness: The opinion when I said in reference to what, sir?

The Court: When you gave your answer you assumed that the Jackson Park Theatre was playing in the C week class?

The Witness: Yes, sir.

The Court: That was your question, wasn't it?

Mr. Seeley: That is right.

Q. And, based on that assumption, I believe you said that it would have taken in admissions as much as those that the Maryland took in; that is right, isn't it?

A. Yes, sir.

Q. Now, I understand, from the testimony that you gave yesterday, that the business that any theatre can do in a given run is affected by the runs in which its competitors play and by the clearances that exists
333 among the several competitors and by their respective admission price. Am I right?

A. Yes, sir.

Q. Now, in answering the question as you did, as to what admissions the Jackson Park would have taken in the C week, are you assuming that the Jackson Park acquired that C week position in free and open competition with its competing theatres?

A. Yes, sir. That is the only way I would get it.

Q. The answer is yes, is that right?

A. Yes.

Q. All right. Now then, assuming, as you have, that the Jackson Park Theatre was playing in C week, and that it was in free and open competition with its competing theatres, what assumption have you made as to where, in what playing position the Tivoli Theatre would have been operating?

A. Could not have gone much further than first run in the terrotiry.

Mr. Seeley: I move to strike that as not responsive.

The Court: It may be stricken.

Mr. Seeley: Wil you read the question to the witness.

334 241 The Court: You understand the question, don't you?

The Witness: Yes.

The Court: What is your answer?

The Witness: I don't know, sir.

Mr. Seeley: Q. Well, would it make any difference in your answer where the Tivoli Theatre was playing?

A. No.

Q. Would the Jackson Park Theatre's receipts be the same if the Tivoli Theatre had been playing in C week?

A. No, the Jackson Park's receipts would be better.

Q. Would the Jackson Park's receipts be the same if the Tivoli Theatre had four weeks' clearance over C week? It did, didn't it? Change the question. Would it be better if it had 8 weeks over C week?

The Witness: Eight weeks or week and week, day and date, which do you mean?

Mr. Seeley: I am asking you if it would make any difference in the amount of admission prices the Jackson Park would take in where the Tivoli played and what terms it had.

The Witness: Yes, it certainly would.

Q. All right. Now, in answering Mr. McConnell's
335 question, where were you assuming that the Tivoli played?

A. In the position they are playing in under that set-up.

Q. And with that same clearance they played in?

A. The same clearances up against C week.

Q. And, as to the Tower, were you also assuming that it played B week?

A. Yes, sir.

Q. And you were assuming that the Avalon Theatre played in A week?

A. Right, sir.

Q. And were you assuming that the Maryland Theatre played in C week?

A. If they wished to, yes.

Mr. Seeley: I move that be stricken.

The Court: Yes.

Mr. Seeley: Can you answer the question?

The Witness: Yes.

242 Mr. Seeley: Q. Were you assuming that the Jeffery Theatre was also playing in C week during that period?

A. Yes, sir.

Q. Were you assuming that the Grove Theatre was also playing in C week during that period?

336 A. Yes, sir.

Q. And where were you assuming that the Shore Theatre played during that period?

A. I am not assuming where the Shore played. was interested in the Jackson Park.

Q. Would it have made any difference in the admissions of the Jackson Park where the Shore played?

A. Yes.

Q. What difference would it have made?

A. They would have been playing day and date date with me.

Q. Would that have had an effect upon the Jackson Park's admissions?

A. I imagine it would, sir.

Q. How much effect?

A. I don't know.

Q. Did you make any attempt to estimate it?

A. No, sir.

Q. When you answered Mr. McConnell's question were you assuming that the Shore was playing in C week day and date with you?

A. No, sir, I would not assume that.

Q. Did you take into consideration at all where the Shore Theatre might have been playing if the Jackson Park played in C week?

337 A. No, sir.

Q. Did you make any assumption as to where the Hamilton Theatre might have been playing if the Jackson Park had been playing in C week?

A. Where they always played, behind the Jackson Park.

Q. How far behind?

A. A week.

Q. You are assuming, then, that the Hamilton would have moved up to the first week position from second week, is that right?

A. Yes, sir.

243 Q. Now, how about admission price? What admission price did you assume that each of these theatres would be charging?

A. I am now charging the same admission price as the Maryland. It has charged C week prices.

Mr. Seeley: I move that be stricken.

The Court: It may go out.

Mr. Seeley: Do you want the question read?

The Witness: I charged my regular week of admission price.

Q. What admission price would that have been?

A. 30 cents.

Q. And what admission prices would the others have been charging?

338 A. The prices they are charging today, I suppose.

Q. That is the basis anyway upon which you answered the question, is that right?

A. That is right.

Q. And do you think it is a reasonable assumption that, under conditions of free and open competition, those theatres would be charging the same admission prices that they are charging today?

A. I don't know what they would do. I don't know what their thoughts are.

Mr. Seeley: I ask that that be stricken.

The Court: It may go out.

Mr. McConnell: I think—

Mr. Seeley: Can you answer my question?

The Witness: Well, I have no way to judge what admission price they would charge. I know what they are charging for the run that they are in and that is the run I asked for.

Mr. Seeley: I move that be stricken. Would you like to have the question read?

The Witness: A. Yes, sir.

Mr. McConnell: I think the witness is entitled to make that explanation.

The Court: Let us read the question.

339 (Question read as follows: 'And do you think it is a reasonable assumption that, under conditions of free and open competition, those theatres would be charging the same admission prices that they are charging today?')

The Court: I think the answer may stand.

244 Mr. Seeley: Q. In answering Mr. McConnell's question, did you assume that they would

be charging the same admission price they are charging today?

Q. Well, on a free and open market admission prices would mean nothing. I could charge any admission I wanted or do as I saw fit. I mean I charged admission prices I thought I could get for the run in the theatre, what the public would pay to see them pictures in that playing position.

Q. I understand. And I believe you told me that, in answering Mr. McConnell's question, you were assuming that there was a free and open market, is that right?

A. Yes, sir.

Q. And that would mean that every theatre out there could charge any price it wanted, wouldn't it?

A. That is right, sir.

340 Q. All right. Now, in answering Mr. McConnell's question as to what the admission price of the Jackson Park would be, what did you have in your mind as to what admission prices would be charged by its competitors in this free and open market that you talk about?

A. Well, all you have got is what has happened in the past to go by. I don't know what would happen. I don't know what they would do. I have no line on what hey would. I try to get the prices that under the conditions we are existing in now and see if I could exist that way. If I was wrong, I would change my prices. I don't know what I could do.

Q. And what you did would depend in part upon what admission prices your competitors charged, wouldn't it?

A. That is right.

Q. Well, you don't know what admission price you would maintain, and you don't know what admission prices any of your competitors would have maintained, under ths condition of free and open competition, how can you say with certainty that under those conditions you would have taken in as much in admissions as the Maryland did during those years?

341 A. You said under the condition of what we are existing under now, under the same condition as the Maryland Theatre is running in the past, if I could

have, if I done the same amount of business I did under that present setup of theirs. They did not say anything about admission prices being changed, they did not say anything about the system of admission being changed. Mr. McConnell asked me if I thought I could do the same amount of business as the Maryland Theatre done under the condition the Maryland Theatre operated, and that is what I answered him.

245 Q. And when you answered him, then, you were assuming that all of those competing theatres did business just as they are doing it now, is that right?

A. I was not assuming. I was told that is what I was to compare it with.

Q. Well, in order to answer the question, didn't you have to assume something about what your competitors were doing?

Mr. McConnell: I object to any argument as to what he had to have to answer the question.

Mr. Seeley: I am entitled, I think, to a lot of latitude here.

342 The Court: He may answer that question.

The Witness: I don't know what they are going to do. I figure if I had the run and had charge of the same admission that I am charging today, which is the same admission as the Maryland Theatre is charging today, with the amount of increase of my patronage, that I could have done as much business as they done with the Jackson Park Theatre.

Mr. Seeley: Q. And do you believe that you could do that regardless of where your competitors played and regardless of what admission prices they charged?

Mr. McConnell: I think, your Honor, that he went to great length to show that he was assuming that there was no change in their position.

The Court: Well, he may answer that question. Do you understand the question, Mr. Witness?

The Witness: Yes, sir. Yes, sir, I could do as much, yes.

Mr. Seeley: Q. If the Maryland and the Jeffery and the Grove dropped their admission prices to 20 cents, could you then have taken in as much in three weeks as the Maryland did, in three years?

A. Well, at 20 cents admission could they have done

343 as much business as they are doing at 30 cents admission?

Mr. Seeley: I am not asking you what they could have done. If they had charged a lower admission price, do you still say that you, at the Jackson Park, could have taken in this amount of admissions you have been talking about?

A. Well, would I charge 30 cents? I might charge 20 cents and do more business with pictures that are newer and pictures that are run earlier.

Q. Well, what admission price would you have charged in order to take in this amount of admissions that you have testified to?

A. With the seating capacity I got at 20 cents admission, I could do that.

246 Q. Is that what you would charge?

A. If they were charging it, yes, sir.

Q. Would it make any difference in the amount you took in whether you were charging 30 cents and they were charging 20 cents, or whether you were charging 20 cents and they were charging 30 cents?

A. Well, if I charged 30 cents I would be getting

344 33⅓ per cent more money in at the box office. Would you get as much people to come if they were charging 20 cents in the same week—

A. And I was charging 30?

Q. Yes, sir.

A. I don't think I would charge 30 cents if they were charging 20,—we are going to bargain for cheaper shows in the same playing position, and the same running time.

Q. In other words, in answering Mr. McConnell's question you were assuming the existence of the same runs and the same minimum admission prices for each run as have existed; is that correct?

A. That was my understanding, yes, sir.

Q. And still you were assuming that that situation would have existed under conditions of free and open competition, is that right?

Mr. McConnell: I object to that. He did not testify to that.

Mr. Seeley: He did.

The Court: Do you understand that question, Mr. Witness?

The Witness: No, I don't sir.

The Court: All right, ask another question.

Mr. Seeley: Q. Are you or are you not in answer-
345 ing Mr. McConnell's question, assuming that from 1937 to 1942, the Jackson Park would have earned these admissions that you speak of under conditions of free and open competition with its competitors?

The Witness: A. Yes, sir.

Q. All right, and you are also assuming, are you not, that under that free and open competition the same runs on the same minimum admission prices for each run would have prevailed as have in fact prevailed, as that not right?

Mr. McConnell: I object to that. He did not testify to that.

Mr. Seeley: Well, we will see what he does testify to.

The Court: Well, you ask if he assumed that. Did you assume those facts he has just related in making your answer to Mr. McConnell's question or not?

The Witness: Well, for comparison I assumed them, yes, sir.

247 The Court: All right, that is the answer.

346 Mr. Seeley: Well, have you an opinion as to whether or not those same runs and minimum admission price would have been in effect under conditions of free and open competition?

Mr. McConnell: He answered that question.

Mr. Seeley: This is a different question.

The Witness: A. I have no opinion of what they are liable to do to change conditions. I don't know what their policy would be. If business was bad and they were not doing much business, I don't know what they would do under free and open conditions.

Q. But whatever they did would affect the business done at the Jackson Park, would it not?

A. It may, and maybe I do things that affect business, too. I have a right to try out and do different things.

Q. In answering Mr. McConnell's question, did you just leave all those factors out of consideration?

A. I did not leave no factors. We are going under business conditions today, and if I can do as much business as Maryland in C week, there is no mention
347 about what tactics used against me, or what tactics I use to get business.

Q. I am going to proceed on what you told me your assumption was, how you understood Mr. McConnell's question. In order to take in the box office of Jackson Park in C week as many admissions as the Maryland took in those years, how many additional people more than you attracted in the first week, would you have had attracted in C week?

A. A week, sir.

Q. You can give it by weeks, if you wish.

A. About 100,000 people a year.

Q. And where would those people come from?

A. They would come from the surrounding territory around the theatre.

Q. They would be people who would desire to see the popular pictures in C week?

A. People that would want to see newer pictures and would not wait for me to show them.

Q. Now, those people who would want to see pictures in C week, went to the Maryland, the Jeffery and the Grove, is that right?

A. Yes, sir.

Q. And to get 100,000 of them in a year to come to Jackson Park, you would have had to take 100,000 people away from the other theatres?

A. Just 2,000 people a week.

348 248 Q. That is, the number of people in a community who want to see a picture at a particular time, is pretty well fixed, regardless of how many theatres they can go to see it?

A. To see it at a fixed time?

Q. Yes, any particular time.

A. Yes. They look in the paper and see a picture they want to see, and go to the theatre that is running it.

Q. If there are three theatres in the neighborhood running it, that patronage would be divided among the three theatres, is that right?

A. Yes.

Q. And if there are ten theatres in the neighbor

hood running it, that same patronage would be divided among the ten, is that right?

A. The theatre count, the offer of the theatre, all those things would help.

Q. I did not mean it would be divided equally.

A. Every theatre bids for its own patronage.

349 Q. During the period you have spoken of, from 1937 to 1942, did the Maryland, the Jeffery and the Grove have enough seats to accommodate all the people in that territory who wanted to see a picture in C week?

A. I never seen Warner Bros. figures. I don't know what they are doing. I don't check their theatres.

Q. Do you have an opinion at all as to whether they were running to capacity or were not?

A. I never checked their theatres. I was busy operating the Jackson Park. I have no time to check theirs.

Q. Do you think that ten theatres of the size and character of Jackson Park could operate in C week in the same territory where Jackson Park and Maryland and Jeffery and the Grove are?

A. I know in the year 1936, I had people come from some place, because business was very good. I handled a lot of people. Where they came from, I don't know whose territory, but they came in the theatre.

Mr. Seeley: I move that be stricken.

350 The Court: It may go out.

Mr. O'Brien: I would like to note an objection to that, as making an irresponsive speech.

The Court: Do you understand the question, Mr. Witness?

The Witness: A. Yes, sir.

The Court: Answer it, please.

249 A. I don't think all the theatres would. Some may and some may not. The theatre that has the most to offer would do the most business.

Mr. Seeley: Q. How about five theatres playing the same week, the same picture, do you think all five would make a profit?

A. They would do a lot better than the ten, maybe.

Q. Do you think all five of them could do alright in that position, in that neighborhood?

A. I don't know. It would depend on the expense and other things involved in the theatre.

Q. I see. Now, then, when Jackson Park Theatre was playing in the first week of release, didn't it get a considerable amount of patronage from people who wanted to see that picture, but who for some reason had not gotten around to see it in the earlier weeks of release?

351 A. I don't think there was enough of them left to get too much patronage.

Q. But whatever you got, included a number of those people?

A. Oh, yes.

Q. Thousands of them, is that right?

A. Well, thousands, yes.

Q. If you move up in C week, a lot of those people who did not get to see the picture in C week, you would not get, would you?

A. I think that is a poor comparison. A majority of people who live close to the theatre would wait for the Jackson Park to get it. I may get people who had not seen it and a few who would not have to go out of my district to see the picture ahead of me.

Q. Then, if you move up to C week, a certain number of people you get in the first week, you would not get in C week?

A. Why?

Q. People who did not want to see it in C week?

A. There wouldn't be enough of them left.

Q. Well, how many would there be?

A. We are doing a bad business today. The people—

352 Q. Mr. Seeley: If you please, I do not want any more speeches from you.

Mr. McConnell: I object.

The Court: If you have an objection, Mr. Seeley, make it. It is not necessary to rebuke the witness.

250 Mr. Seeley: I regret that I became impatient. I apologize to the witness.

Q. In answering Mr. McConnell's question, what product did you assume that the Jackson Park would have in C week?

A. The product I have today.

Q. That is, the product of all the distributors?

A. Yes, sir.

Q. Did you assume that you would acquire that product in free and open competition?

A. Yes.

Q. There is nothing inconsistent, is there, between free and open competition and an exhibitor getting product from all the distributors in the same playing position?

A. No, sir.

Q. Now, Mr. Salkin, in answer to Mr. McConnell's question, were you making a statement of which you
353 were very certain, or were you to some extent guessing at things?

Mr. McConnell: I object to that.

The Court: Objection sustained.

Mr. Seeley: Q. Mr. Salkin, did the answer which you made to Mr. McConnell's question, involve making any estimates?

A. These estimates of my own judgment in that theatre brings in close contact with a number of things.

Q. Just tell what estimates you made in arriving at the answer.

A. The amount of increase in business a run of that type would mean to Jackson Park, I could increase my business that much by running pictures newer than I am running them now.

Q. Now, to what, if any, data or figures did you resort in making that estimate?

A. I have no figures that I got that estimate from.

Mr. Adcock: I did not hear that.

A. I have no figures.

Mr. Seeley: Q. When did you first think about the question of how much more business you could do if you operated in C week during those years?

A. As long as I have been with Jackson Park Thea-
354 tre, I have always felt Jackson Park Theatre was affected by other theatres playing the picture before me, in any position they played. If I could play newer pictures, I could do more business and not lose patronage.

251 Q. When did you first consider trying to arrive at an estimate of how much more you could do in C week?

A. I did not arrive at that. They were shown to

me. I was asked if I thought I could do as much business as the Maryland in C week release. I think that the Jackson Park, with a small increase,—that would have to be made in comparison—I could do as much business as the Maryland with newer pictures.

Q. How long have you thought that?

A. I always thought Jackson Park ought to have newer pictures.

Mr. Seeley: I move that be stricken.

The Court: The question is, how long have you thought that?

A. If I could do as much as Maryland?

The Court: Yes.

A. I just saw the Maryland figures lately. I never
355 seen them before.

Mr. Seeley: Q. Before you saw the Maryland figures, had you any idea in your mind as to how much better you could do in C week.

A. I had an idea what I could do. I did not know what they were doing.

Q. What was your idea before you saw those figures? How much better did you think you could do in C week?

A. I thought Jackson Park could increase its business a lot by running pictures newer.

Q. How much?

A. Double.

Q. Are you pretty sure of that?

A. As far as my judgment does.

The Court: That is all you are asking?

Mr. Seeley: That is all I am asking.

The Witness: A. Yes, sir.

Q. I want to return again to the deposition which you gave before this trial, and ask you if this question was put to you:

'Q. In your opinion, then, were the license fees which you were paying, lower than the fair license fees which you would have been willing to pay for advance run, the C run?'

And did you make this answer:

356 252 'A. That is a hard question, because I don't know how much business I can do under C run. I imagine what I can do, but we are not talking about C run.'

Did you make that answer?

The Witness: Yes.

Q. Now, in answering Mr. McConnell's question, about the admissions to the Jackson Park Theatre, were you assuming that you would have been double featuring during those years?

A. I don't assume what I would have done. I would have gone along as conditions went along. I would have met competition. I don't think I would have started double featuring, maybe under open marketing. I may have run single.

Q. You understand, under Mr. McConnell's question, that you were taking all the other theatres just as they were, just as they actually did play, is that right?

A. Yes, sir.

Q. What they actually did was double feature?

A. Yes.

Q. If they were all double featuring and Jackson Park was playing either first or C week, you assume you would be double featuring, too?

A. Yes, sir.

Q. Is there anything inconsistent between Jackson Park and all those other theatres double featuring, and the existence of free and open competition?

A. I don't understand that, sir.

Q. Could double featuring among all these theatres, in your opinion, exist under conditions of free and open competition?

Mr. McConnell: I object to this as not proper cross-examination on the particular question asked this witness, to which Mr. Seeley's line of questioning is directed.

Mr. Seeley: I think on the last question, you may be right. I will withdraw that. That is all of my cross-examination.

May I make a motion, right after the session, a very short one?"

Thereafter Mr. Seeley made a motion to strike all of the testimony of the witness on the subject with reference to the Jackson Park Theatre during the five years in question receiving as many admissions as the Maryland Theatre did, had the Jackson Park Theatre been playing

in C week, on the ground that it appeared from the cross-examination of the witness that his testimony in that respect was based upon conjecture and speculation, as follows. (Rec. 363-4):

"Mr. Seeley: The motion is to strike the last answer given by the witness Salkin on direct examination, on the ground that the cross-examination shows that the answer is speculative and conjectural.

The Court: I don't know what the answer was.

364 Mr. Seeley: Well, I mean his statement, that if the Jackson Park has played in C week, it would have earned as much as the Maryland Theatre did.

The Court: What do you say? (Addressing Mr. McConnell.)

Mr. McConnell: Your Honor has heard the testimony. He has shown the basis of it, and his business experience. I thought it was strengthened.

The Court: I will disallow that motion."

C. The witness A. B. Butler was an accountant who testified for the plaintiffs (Rec. 718-786). He kept the books and made accountants' reports, prepared income tax returns for E. I. Bloom, father of plaintiffs, for several years beginning with about the year 1930, prior to the date when the theatre and other property was acquired by the plaintiffs from their father about November 1, 1936, and did the same accounting work for the plaintiffs from that time on. He prepared Plaintiffs' Exhibits 47, 48 and 49. His testimony as well as Plaintiffs' Exhibits 47, 48 and 49 were moved by the defendants to be stricken, as stated in Point 3. Objections to the said exhibits and to his testimony regarding same were made at the time of the presentation of his testimony and the offering of the exhibits at the time the witness testified.

254 Plaintiffs' Exhibit 47 sets forth the gross admissions at the Jackson Park and Maryland Theatre from July 28, 1937 to July 28, 1942, by years, and gives the excess of Maryland by years over Jackson Park.

Also, for the same period, it sets forth the film rental by years at both theatres and shows the excess of film rental at the Maryland over Jackson Park by years. It also sets for the net excess increased admissions over increased film rental as $115,982.34. The figures as to the Maryland Theatre were taken from Plaintiffs' Exhibit 44 and the

figures as to Jackson Park were taken from Plaintiffs' Exhibit 49 and from the testimony of the witness. This exhibit first shows the total net profit per income tax returns for the Jackson Park Theatre by years for the period from July 28, 1937 to July 28, 1942, as $94,340.01. There is added to this for said period the increased admissions to equal admissions of Maryland Theatre, $187,520.53, making a total of $281,860.54. From that there is deducted "Increased Film Rental to Equal Film Rental of Maryland Theatre—$71,538.19", leaving a balance of $210,322.35.

Under the heading "Loss Claimed—based on Adjustments of Admissions and Film Rental", there is deducted from the $210,322.35 the actual profits of Jackson Park Theatre for the period of $94,340.01, leaving a balance of $115,982.34—claimed loss or damage based upon using the operation of the Maryland Theatre during this period as a basis of comparison. The exhibit also sets forth the average net profits for four years prior to said July 28, 1937, eliminating, according to the witness's testimony, estimated bank night receipts, by years, which average yearly net profit for the four years was $44,000. This is multiplied by five which makes a total of $220,000 as the amount which Jackson Park Theatre would have made as profits for
255 the five years from July 28, 1937 to July 28, 1942, had it made as much money on the average during those five years as it did on an average during the four year period prior to July 28, 1937. From this amount, according to the exhibit, there is deducted net profits per income tax returns for the five year period in question, $94,340.01 from the said $220,000 leaving a balance of $125,659.99 as the "Loss Claimed—based on differences between Average Four Year Net Profit and Actual Net Profit for Subsequent Years".

The following question was put to the witness (Rec. 722):

"Q. What were the net profits for the Jackson Park Theatre for the years 1933 to 1936?"

To this question, the defendants objected, shown as follows (Rec. 727-30):

"Mr. McConnell: There was an objection, I think.

Mr. Seeley: Yes. I was going to state an objection to the question, which I think was: What were the

profits of the Jackson Park Theatre during the years 1933, '34, '35 and '36?

One objection is that the question calls for a conclusion.

The Court: Keep the jury out for a moment. They want to argue this motion.

Mr. Seeley: (Continuing.) —since profits are the result of a calculation of income, expenses and various other things in order to prove profit, there must be a showing of the elements which go into it.

Then I object, too, that oral testimony of that kind is not the best evidence, that the books from which the witness is testifying should be produced.

On a broader ground than that, I object to the plaintiffs introducing any testimony as to the profits of the theatre before these plaintiffs took it over, because the only conceivable reason for it would be to compare those profits with the profits made after the plaintiffs took it over, and thus to arrive at some kind of an estimate of the damages.

728 The evidence here shows that so far as run and playing position are concerned, the situation was exactly the same before the plaintiffs took over the theatres as it was after they took over the theatre.

256 Now, if that is so, and if there is a difference between the profits before and the profits after, it seems to me obvious that the difference must have been caused by something other than this alleged conspiracy relating to run and clearance.

We know for one thing that shortly after the plaintiffs took over this theatre, double featuring was introduced, and Mr. Richard Salkin testified that that decreased the business of the theatre.

Now, I think there has been absolutely no evidence to indicate that double features were introduced by any conspiracy of any kind whatever. The evidence so far is all the other way; and it does not seem to me that any comparison therefore of profits made under single feature and profits made under double feature can possibly be introduced on the foundation that has been laid up to this time.

We also know from the evidence that in 1936 this theatre and others had bank nights, and that that was a great business getter.

729 Certainly the defendants in the alleged conspiracy are not responsible for bank night, and if these figures were to be used in comparing the profits before and after, something would have to be done to take out the effect of bank night. The defendants here are in the motion picture business, not in the bank night business.

Moreover, the evidence here shows that this theatre uses the films of some ten distributors, ten or eleven of whom only five are defendants here, and only five are accused of being in the conspiracy.

Now, clearly some part of the profit or loss of this theatre must be attributed to the business they did with the other five distributors, and these defendants can not be charged with the responsibility of what any of those others did. There is no evidence that they were responsible for it; and in order to use the profit and loss figures of the theatre, in this case, as proof of damages, something will have to be done to eliminate the portion of the business for which the defendants are in no way whatever responsible.

That, I think covers my objection. In addition to it
730 I want to make the objection I have already made, that any approach to the problem of damages here is improper under the authorities, unless the fundamental basis of the comparison is what did the plaintiffs do working under the alleged conspiracy compared with what it did or could have done, if that can be proven, when it was free of the alleged conspiracy; and whenever we are in the realm where we are attempting to compare simply one period of the alleged conspiracy with another period of the alleged conspiracy, all proof going to damages is incompetent and irrelevant and immaterial.

Mr. Adcock: I did not hear that last.

(Record read).

257 Mr. O'Brien: I would add a point, although it may have been stated, I am not certain, that the course is not permissible under the authorities.

Mr. Adcock: I can not hear you.

Mr. O'Brien: Is not permissible under the authorities, to prove profits or earnings which were acquired or which were made or acquired by way of operation

under the very system complained of. That is that Robeson case which I cited to your honor, and there are other cases to the same effect."

At Rec. 750 the court overruled the objection and stated: "* * * the witness may proceed to testify along the lines he started."

Plaintiffs' Exhibit 49 was offered and received in evidence over objection (Rec. 755-60) and it was agreed that the objections theretofore made to the question put as to the profits of the Jackson Park Theatre for the years 1935 to 1936 should stand to the entire line of examination of the witness without repeating the objections.

Similarly, Plaintiffs' Exhibits 47 and 48 were received in evidence (Rec. 780) over the objections of the defendants.

19. The court erred in allowing and fixing as costs attorney's fees on behalf of plaintiffs in the sum of $30,000.

RKO Radio Pictures, Inc., Loew's, Incorporated, and Twentieth Century-Fox Film Corporation, Defendants-Appellants,

By Miles G. Seeley,
Their Attorneys.

Paramount Pictures Inc. and Balaban & Katz Corporation, Defendants-Appellants,

By Edmund D. Adcock,
Edward R. Johnston,
Their Attorneys.

Vitagraph, Inc., Warner Bros. Pictures, Inc., Warner Bros. Circuit Management Corporation and Warner Bros. Theatres, Inc., Defendants-Appellants.

By Vincent O'Brien,
Their Attorney.

203 And afterwards, to wit, on the 21st day of August, 1944, being one of the days of the regular July term of said Court, in the record of proceeding thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

204 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

ORDER.

This cause having come on to be heard upon the motion of the defendants-appellants with respect to the transmission of original exhibits to the Circuit Court of Appeals on the appeal in this cause, for an extension of time for the filing and docketing of the appeal herein, and that in the Statement of Points where error is urged going to the admission or the rejection of evidence, the defendants may set forth the page references to the evidence so admitted or rejected and the objections and rulings thereon in lieu of quotations from the record setting forth the full evidence so admitted or rejected and the objections and rulings thereon, and the court being fully advised in the premises,

It Is Hereby Ordered:

1. That all of the original exhibits which were introduced in evidence upon the trial of this cause, as well as Plaintiffs' Exhibit 123 for identification, be certified as such by the clerk of this court and be transmitted by the clerk of this court to the United States Circuit Court of Appeals for the Seventh Circuit for use on defendants-appellants' appeal from the judgment entered in this cause on March 14, 1944.

205 2. That the time for filing and docketing the appeal in the United States Circuit Court of Appeals for the Seventh Circuit be and is hereby extended to and including ninety days from the date of the first notice of appeal, to-wit, ninety days from August 18, 1944.

3. That in the Statement of Points with reference to errors urged going to the admission or the rejection of evidence, the defendants may set forth the page references to the evidence so admitted or rejected and the objections and rulings thereon in lieu of quotations from the record setting forth the full evidence so admitted or rejected and the objections and rulings thereon.

Enter:

Igoe,
Judge.

Dated: Aug. 21, 1944.

208 And on the same day to wit, the 21st day of August, 1944, there was filed in the Clerk's office of said Court a certain Supersedeas Appeal Bond in words and figures following, to wit:

209 IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—4525). * *

SUPERSEDEAS APPEAL BOND.

Know All Men By These Presents, that we, RKO Radio Pictures, Inc., a corporation, Loew's, Incorporated, a corporation, Paramount Pictures Inc., a corporation, Twentieth Century-Fox Film Corporation, a corporation, Vitagraph, Inc., a corporation, Balaban & Katz Corporation, a corporation, Warner Bros. Pictures, Inc., a corporation, Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation, defendants in the above entitled cause, are held and firmly bound unto Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom, plaintiffs in the above entitled cause, in the full and just sum of Four Hundred and Fifty Thousand Dollars ($450,000), to be paid to the said Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom, plaintiffs, their executors, administrators, successors and assigns; to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Whereas, on the 14th day of March A. D. 1944, a judgment was entered in the above entitled cause in favor of the persons above named as plaintiffs and against the 210 persons above named as defendants, in the sum of Three Hundred Sixty Thousand Dollars ($360,000) and costs, and the said defendants have filed in the above entitled cause a notice of appeal from the said District Court to the Circuit Court of Appeals to reverse the said judgment.

And Whereas, to secure the fullfillment of the obligation of this supersedeas appeal bond by the said defendants and each of them, negotiable bearer bonds of the United States have been deposited with Chicago Title and Trust Company of Chicago, Illinois, as Trustee (herein

after in this document referred to as "Trustee") of the aggregate face amount of Four Hundred and Fifty Thousand Dollars ($450,000) by the defendants, described as follows:

U. S. A. 2% Treasury Bonds of 1952-54, dated June 26, 1944, due June 15, 1954, Nos. 60870L-76F at $10,000 each, with December 15, 1944 and subsequent coupons attached	$ 70,000
U. S. A. 3% Certificates of Indebtedness, Ser. "C" 1945, dated June 26, 1944, due June 1, 1945, Nos. 31913-17, 35940-41 at $10,000 each, with December 1, 1944 and subsequent coupons attached	70,000
U. S. A. 3% Certificates of Indebtedness, Ser. "C" 1945, dated June 26, 1944, Due June 1, 1945, Nos. 33536-42 at $10,000 each, with December 1, 1944 and subsequent coupons attached	70,000
U. S. A. 2½% Treasury Bonds of 1949-53 dated December 15, 1936, due December 15, 1953, No. 2008J at $100,000, with December 15, 1944 and subsequent coupons attached	100,000
U. S. A. 2% Treasury Bonds of 1952-54 dated June 26, 1944, due June 15, 1954, Nos. 63318J-20L, 63331A-32B, 66787H, 67680L at $10,000 each, with December 15, 1944 and subsequent coupons attached	70,000
U. S. A. 3% Certificates of Indebtedness Ser. "C" 1945, dated June 26, 1944, due June 1, 1945, Nos. 53339-42 at $10,000 each with December 1, 1944 and subsequent coupons attached	50,000
U. S. A. 2¾% Treasury Bonds of 1948-51, dated March 16, 1936, due March 15, 1951, Nos. 9865E-66E at $10,000 each, with September 15, 1944 and subsequent coupons attached	20,000

211. The Trustee shall give to each of the defendants depositing bonds a receipt describing the bonds deposited by such defendant.

Now, Therefore, the condition of this obligation is such that if the said defendants shall prosecute their appeal with effect and shall satisfy the judgment or any modification thereof or any judgment ordered to be entered by the mandate of the Circuit Court of Appeals or of the

United States Supreme Court in full, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed in whole or in part, and shall satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate courts may adjudge and award, then this obligation to be void, and upon payment of the Trustee's fees and expenses the United States bonds on deposit with the Trustee as herein provided shall be released to the respective defendants who have deposited them, upon delivery to the Trustee of a certified copy of an order of reversal of the judgment, or in the event the appeal is dismissed or the judgment is affirmed in whole or in part, then upon delivery to the Trustee of a certified copy of the record of the said District Court showing that the judgment has been fully satisfied and upon delivery to the Trustee of a certified copy of the record of the appellate court showing satisfaction in full of such costs, interest, and damages as the appellate courts may have adjudged and awarded. In the event review shall be sought in the Supreme Court of the United States following judgment in the Circuit Court of Appeals, then certified copies of order and of record shall be delivered to the Trustee of action in that court, as well as of action in the Circuit Court of Appeals as above provided.

212 Otherwise this obligation is to remain in full force and virtue.

In the event, however, of an affirmance of the said judgment in the appellate courts on said appeal or of a partial affirmance or a reversal with directions to the Trial Court to enter some other or different judgment in favor of the plaintiffs and upon the entry of such judgment by the Trial Court or of a dismissal of said appeal, whether either occur in the Circuit Court of Appeals or in the Supreme Court of the United States, then upon the expiration of twenty days after written notice served upon the Trustee that the mandate of said Circuit Court of Appeals or of the United States Supreme Court, as the case may be, has been issued and filed in the said District Court, and upon the delivery to the Trustee of a certified copy of such mandate and a certified copy of the judgment entered by the Trial Court pursuant to such mandate, and the judgment and costs, interest and damages, as the appellate courts may adjudge and award, are not then satisfied, then

upon demand in writing signed by Thomas C. McConnell or such other attorney as may be then representing the plaintiffs of record, and delivered to the Trustee, for sale of the United States bonds to satisfy the said judgment and the said costs, interest and damages, the Trustee shall mail copies of the demand to the defendants at their several addresses herein indicated after their signatures hereto; and ten (10) days after such mailing of copies of the demand, the Trustee shall sell the United States bonds so held by it on deposit, at public or private sale. If the Trustee in its discretion finds it advisable and expedient to ready distribution, and finds that sufficient yield will be realized adequate for the purpose, it may sell less than all the bonds. Out of the proceeds of 213 the sale, the demands of the plaintiffs hereunder shall first be satisfied in full, and the trustee shall have a right to charge its Trustee's expense of sale and its fees out of any balance then remaining in its hands. Payment of the plaintiffs' demands shall be made upon receipt by the Trustee of a satisfaction of judgment on plaintiffs' behalf to Thomas C. McConnell at 134 South LaSalle Street, Chicago, Illinois, or to the said Thomas C. McConnell at such other address, or to such other person at such address, as shall have been indicated by writing signed by all the plaintiffs and delivered to the Trustee. After such payment in full of plaintiffs' demands, any balance of proceeds of sale and any unsold bonds, less the amounts necessary to pay the Trustee's fees and disbursements, shall be distributed by the Trustee among the defendants in the proportion of their respective deposits of bonds hereunder. And thereupon this obligation shall be of no further force or effect.

If the proceeds of the sale of the said United States bonds shall be inadequate to satisfy the demands of plaintiffs hereunder in full, then upon payment thereof to the said Thomas C. McConnell or to such other person to be indicated by the plaintiffs as above provided, further duties and obligations of the Trustee hereunder shall cease; but the obligation of defendants hereunder shall continue until plaintiffs' demands are satisfied in full and the Trustee's charges and expense are satisfied in all.

It is agreed that the United States bonds deposited as security as aforesaid may be withdrawn by the particular

defendants who have deposited them, as aforesaid, any and all of them, by substituting for such as are to be withdrawn, other negotiable bearer United States bonds
equal in face amount to those withdrawn upon deposit-
214 ing in the mail five (5) days in advance of such withdrawal and substitution, written notice of the intention to make such withdrawal and substitution, addressed to Thomas C. McConnell at 134 South LaSalle Street, Chicago, Illinois, or to the said Thomas C. McConnell at such other address, or to such other person at such address, as shall have been indicated by writing signed by all the plaintiffs and delivered to the Trustee prior to the mailing of the five-day notice hereinabove provided, of withdrawal and substitution of the securities on deposit. The Trustee shall be justified in acting upon an affidavit of such deposit in the mail of the notice of withdrwal and substitution. If objection in writing by the plaintiffs be served upon the Trustee within the five days, then no withdrawal or substitution shall be permitted until the objections are withdrawn by those making the objections.

While the United States bonds are on deposit with the Trustee and before any action is taken hereunder for their disposition or sale, interest on them may be collected by the respective depositors of the bonds and may be appropriated by them to their own uses, and the Trustee shall deliver to the depositors such interest coupons that may mature during that period as may be annexed to the bonds.

The defendants shall and do hereby agree to pay the Trustee's fees and expenses.

In Witness Whereof the said RKO Radio Pictures, Inc., a corporation, Loew's, Incorporated, a corporation, Paramount Picture Inc., a corporation, Twentieth Century-Fox Film Corporation, a corporation, Vitagraph, Inc., a corporation, Balaban & Katz Corporation, a corporation,
Warner Bros. Pictures, Inc., a corporation, Warner
215 Bros. Circuit Management Corporation, a corporation,
and Warner Bros. Theatres, Inc., a corporation, defendants, have caused their respective corporate names to be hereunto subscribed by their respective presidents or vice presidents, as the case may be, and their duly attested corporate seals to be hereunto affixed by their respective secretaries or assistant secretaries, as the case may be, and their respective addresses to be indicated; and the Chicago Title and Trust Company, a corporation, as

Trustee, has similarly caused this instrument to be subscribed to indicate and evidence its agreement to do the things above provided for it to do and perform as Trustee of said bonds hereunder; all as of the 21st day of August 1944.

A duplicate copy of this bond has been executed for deposit with the Trustee.

Balaban & Katz Corporation, a corporation,
By (Illegible)
Vice President.
(Corporate Seal) 175 North State St.
Chicago, Ill.

Attest:
(Illegible)
Asst. Secretary.

Paramount Pictures Inc., a corporation,
By (Illegible)
Vice President.
(Corporate Seal) 1501 Broadway,
New York, N. Y.

Attest:
Norman Collyer,
Asst. Secretary.

RKO Radio Pictures, Inc., a corporation,
By Malcolm Kingsberg,
Vice President.
(Corporate Seal)

Address 1270 Sixth Avenue,
New York 20, N. Y.

Attest:
(Illegible)
Secretary.

216 Loew's, Incorporated, a corporation,
By (Illegible)
Vice President.
(Corporate Seal) Address 1540 Broadway,
N. Y. C.

Attest:
(Illegible)
Secretary.

Twentieth Century-Fox Film Corporation, a corporation,
By (Illegible)
(Corporate Seal) *Exec. Vice-President.*
Address 444 West 56th St.,
N. Y. C.

Attest:
Felix A. Jenkins,
Secretary.

Warner Bros. Pictures, Inc., a corporation,
By W. Stewart McDonald,
(Corporate Seal) *Asst. Treas.*
Address 321 W. 44th St.,
Attest: N. Y. C.
R. W. Perkins,
Secretary.

Warner Bros. Circuit Management Corporation, a corporation,
By (Illegible)
(Corporate Seal) *Vice-President.*
Address 321 W. 44th St.,
Attest: N. Y. C.
R. W. Perkins,
Secretary.

Warner Bros. Theatres, Inc., a corporation,
By (Illegible)
(Corporate Seal) *Vice-President.*
Address 321 W. 44th St.,
Attest: N. Y. C.
R. W. Perkins,
Secretary.

Warner Bros. Pictures Distributing Corporation, formerly known as Vitagraph, Inc., a corporation,
By (Illegible)
(Corporate Seal) *Vice President.*
Address 321 W. 44th St.,
Attest: N. Y. C.
R. W. Perkins,
Secretary.

Chicago Title and Trust Company, a corporation,
By Harold A. Moore,
Vice President.

(Corporate Seal)

Attest:
E. L. Povenz,
Asst. Secretary.

217 The provisions of the foregoing Bond are approved and agreed to by:

Florence B. Bigelow,
Marion B. Koerber,
John E. Bloom,
William C. Bloom,
Plaintiffs.

8/21/1944

Approved:
M. L. Igoe,
D. J.

206 And on the same day, to wit, on the 21st day of August, 1944, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

207 In the District Court of the United States.

(Caption—4525)

ORDER.

This cause having come on to be heard upon the motion of the plaintiffs for approval of the supersedeas appeal bond, which bond is here and now presented to this court for its approval, notice of appeal to the Circuit Court of Appeals for the Seventh Circuit having been filed herein by the defendants with the Clerk of this Court on the 18 day of August, 1944, and for an order staying all proceedings herein until the further order of court on the judgment entered herein on March 14, 1944, and the Court being fully advised in the premises.

It Is Hereby Ordered, Adjudged and Decreed that the

supersedeas appeal bond here and now presented to the Court by the defendants for the Court's approval be and the same is hereby approved, which approval is also shown by the Court's endorsement on said bond, and the Court hereby directs that the said bond so approved be filed with the Clerk of this Court and that all proceedings herein upon the judgment entered herein on the verdict of the jury on March 14, 1944, be and the same are hereby stayed until further order of this Court.

Enter:

Igoe,
Judge.

Dated: August 21, 1944.

218 And afterwards, to wit, on the 22nd day of August, 1944, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

219 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

ORDER.

This matter coming on to be heard on the verified petition of the plaintiffs filed herein on April 15, 1944, to tax costs and fix attorneys' fees as part thereof upon an agreed statement of what the plaintiffs' counsel would testify to as to the nature, extent and amount of services rendered to the plaintiffs herein, and the Court having heard the statements and argument of counsel and having in the course of this proceeding acquired personal knowledge of the nature and character of the services rendered by the plaintiffs' counsel, Does Find:

1. That the plaintiffs' counsel has rendered in excess of thirteen hundred (1300) hours of service in the preparation and trial of the legal issues herein involved and of such time practically four weeks were spent before this Court in the trial of this cause.

2. That the issues involved herein were difficult and in some aspects unique and that the results obtained were against determined and able opposition.

220 3. That the amount fixed is such amount as would be reasonable without giving any consideration to the contingent nature of the compensation contracted to be paid by the plaintiffs and is without prejudice to any claim of plaintiffs' counsel as to any obligation for compensation in excess of the amount allowed which the plaintiffs may have incurred with the plaintiffs' counsel in this case.

4. That taking into consideration the nature and character of the litigation, the novelty and difficulty of the problems involved, the time spent and the result obtained, the sum of $30,000 is a fair and reasonable allowance to the plaintiffs for their attorneys' fees herein.

5. That the plaintiffs have also incurred as other costs herein the amount set forth in their verified petition, which totals the sum of $48.49.

It Is Therefore Ordered, Adjudged and Decreed that the sum of $30,048.49 be and it is hereby taxed as the plaintiffs' costs herein, to be included as the costs in the judgment heretofore entered herein on March 14, 1944.

Enter:

Igoe,
Judge.

Dated: August 22, 1944.

258 And on the same day, to wit, the 11th day of October, 1944, there was filed in the Clerk's office of said Court a certain List of Names of Plaintiffs-Appellees and Defendants-Appellants and their Attorneys of Record, in words and figures following, to wit:

259 IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—4525)

The names of Plaintiffs-Appellees and Defendants-Appellants and their Attorneys of Record are as follows:

Plaintiffs-Appellees:

Florence B. Bigelow, Marion B. Koerber, John E. Bloom, William C. Bloom; Thomas C. McConnell, 134 South La Salle St., Chicago, Their Attorney.

Defendants-Appellants:

RKO Radio Pictures, Inc., Loew's, Incorporated, Twentieth Century-Fox Film Corporation; Miles G. Seeley, 231 South La Salle St., Chicago, Their Attorney.

Paramount Pictures Inc., Balaban & Katz Corporation, Edmund D. Adcock, 134 South La Salle St., Chicago, Edward R. Johnston, 11 South La Salle St., Chicago, Their Attorneys.

Vitagraph, Inc., Warner Bros. Pictures, Inc., Warner Bros. Circuit Management Corporation and Warner Bros. Theatres, Inc.; Vincent O'Brien, 105 South La Salle St., Chicago, Their Attorney.

268 And on the same day, to wit, the 11th day of October 1944, came the Defendants-Appellants by their attorneys and filed in the Clerk's office of said Court their certain Designation, in words and figures following, to wit:

269 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

DESIGNATION OF THE PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON THE APPEAL BY THE DEFENDANTS-APPELLANTS TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Defendants-Appellants do hereby designate the following as the portions of the record, proceedings and evidence to be contained in the record on the Defendants-Appellants' Appeal to the United States Circuit Court of Appeals for the Seventh Circuit:

1. Placita.

2. Statement of title of cause, parties and number and commencement of the action by the filing of the complaint.

3. The complaint and all amendments thereto and the answers of defendants and all amendments thereto.

3a. Motions of defendants for more definite statement of claim or bill of particulars, etc., filed September 7, 1942 and order of court overruling said motions entered December 1, 1942.

4. Order entered February 14, 1944 calling cause for trial and selecting and swearing jury.

5. Order entered February 18, 1944 with respect to the jury's viewing the different theatres involved.

6. Order entered February 23, 1944 that all contract

received in evidence be filed at the conclusion of the trial and then be impounded by the clerk of the court.

7. Motions at the conclusion of the plaintiffs' evidence of the several defendants that the court direct a verdict for the defendants.

8. Orders of the court overruling the several motions of the defendants for directed verdict.

270 9. Defendants' motions and order overruling same that plaintiffs be required to elect the theory of damages upon which they rely.

10. Several motions of defendants to strike all the evidence of the plaintiffs with respect to proof of damages and particularly Pl. Exs. 47 and 48, and order overruling same.

11. Several motions of the defendants at the close of all the evidence that the court direct the jury to bring in a verdict for the defendants, and each of them, and orders overruling such motions.

12. The verdict of the jury.

13. Judgment on the verdict of March 10, 1944.

14. Order entered March 14, 1944 setting aside and vacating the judgment entered March 10, 1944 and entering a judgment on the verdict for $360,000 and costs, and giving defendants ten days therefrom to file motion for new trial, motion for judgment notwithstanding the verdict of any other motions, and giving defendants ten days thereafter to file briefs in support of their motions, and plaintiffs given ten days thereafter to file briefs in opposition to said motions and defendants given five days thereafter to file reply briefs.

15. Motion of defendants filed March 24, 1944 for judgment notwithstanding the verdict of the jury and in the alternative for new trial, with affidavits in support of the motion for new trial.

16. Counter-affidavits to the affidavits of defendants in support of their motion for new trials filed by plaintiffs April 15, 1944.

16a. April 19, 1944, hearing on defendants' motions for judgment notwithstanding the verdict and, in the alternative, for new trial, reset for May 19, 1944, and time within which to file briefs and affidavits extended to April 29, 1944.

17. Stipulation filed April 29, 1944 between all counsel that if two or more jurors were called to testify, they would testify that Pl. Ex. 123 for identification was present in the

jury room during the deliberation of the jury on their verdict, that the said jurors saw and examined the contents thereof before the jury reached their verdict.

18. Counter-affidavits for defendants in opposition to counter-affidavits of plaintiffs filed April 29, 1944.

19. Stipulation of May 19, 1944 in open court between counsel that the affidavits of defendants filed by the defendants with and in support of and accompanying their motion for new trial, the counter-affidavits filed by plaintiffs and the counter-affidavits filed by the defendants in reply to such counter-affidavits of the plaintiffs, be treated as in evidence with the same force and effect as if the makers of such affidavits appeared and testified, subject to the objection of plaintiffs as to the affidavit of Vincent O'Brien wherein there is set forth conversation he had with one of the jurors after the verdict.

271 20. Order of June 1, 1944 denying and overruling the defendants' motion for judgment notwithstanding the verdict filed March 24, 1944, and, in the alternative, for new trial.

21. Notice of appeal with date of filing and proof of service of copy on plaintiffs' counsel.

22. Supersedeas appeal bond with date of filing.

23. Order entered August 21, 1944 approving supersedeas appeal bond and staying further proceedings.

24. Order entered August 21, 1944 directing clerk to transmit to the Court of Appeals all exhibits to be used in connection with the appeal; that the time to file the appeal and record in the United States Circuit Court of Appeals for the Seventh Circuit be extended ninety days from the filing of notice of appeal, August 18, 1944, and order with reference to the form of Statement of Points.

25. Order of court on the taxing of costs, including as part of the costs the fixing of the plaintiffs' attorneys' fees.

26. Names of plaintiffs-appellees and defendants-appellants and their respective attorneys of record.

27. Designation by defendants-appellants as to matter to be included in the record.

28. Statement by defendants-appellants of points relied on and of errors asserted and intended to be urged by them.

29. Reporter's transcript of all the evidence and proceedings at the trial, including the instructions submitted by the different parties, objections thereto, observations

on such objections, and rulings of the Court thereon, the Court's charge to the jury and renewal of the defendants' objections, and that portion of the reporter's transcript at the hearing before the court on May 19, 1944 with reference to the stipulation between counsel for all parties with respect to the receiving in evidence of stipulation as to Pl. Ex. 123 id. being present in the jury room and the affidavits filed by defendants and the plaintiffs in connection with motion for new trial being treated as in evidence as if the makers of the affidavits had appeared and testified and the transcript of the proceedings before the court of August 21, 1944 with respect to the fixing of attorneys' fees of the plaintiffs as part of the costs, certificate of Court Reporter and stipulation as to copies of certain exhibits as part of the reporter's transcript.

30. Tall exhibits offered and received in evidence at the trial before the jury in this cause, including Pl. Ex. 123 for identification, which are as follows:

272 PLAINTIFFS' EXHIBITS.

1. Contract for purchase of Jackson Park Building by four plaintiffs.

4, 5, 6, 7. 16 photographs of Jackson Park Theatre.

8, 9, 10. Attendance records of Jackson Park Theatre: July 15, 1934 to February 7, 1937, February 8, 1937 to November 19, 1939, November 20, 1939 to August 29, 1943.

11 to 38. Folders containing Film License Agreements between owners of Jackson Park Theatre and distributors as follows:

11. Warner Bros., 1940-41, 1941-42.
12. Vitagraph, Inc., 1937-38, 1938-39, 1939-40.
13. First National Warner, 1935-36, 1936-37.
14. Paramount Pictures, 1937-38, 1938-39, 1939-40.
15. Paramount Pictures, 1940-41, 1941-42.
16. Metro-Goldwyn-Mayer, 1935-36, 1936-37.
17. Metro-Goldwyn-Mayer, 1937-38, 1938-39, 1939-40.
18. Metro-Goldwyn-Mayer, 1940-41, 1941-42.
19. RKO Pictures, 1935-36, 1936-37.
20. RKO Distributing Corp., 1937-38, 1938-39, 1939-40.
21. RKO Distributing Corp., 1940-41, 1941-42.
22. Paramount Pictures, 1936-37.

23. Twentieth Century-Fox, 1940-41, 1941-42.
273 24. Fox Film Exchange, 1935-36, 1936-37.
25. Fox Film Corp., 1937-38, 1938-39, 1939-40.
26. Columbia Pictures Corp., 1940-41, 1941-42.
27. Columbia Pictures Corp., 1937-38, 1938-39, 1939-40.
28. Columbia Pictures, 1935-36, 1936-37.
29. United Artists, 1935-36, 1936-37.
30. United Artists, 1937-38, 1938-39, 1939-40.
31. United Artists, 1940-41, 1941-42.
32. Universal Pictures, 1935-36, 1936-37.
33. Universal Film Exchange, 1937-38, 1938-39, 1939-40.
34. Universal, 1941-42.
35. Miscellaneous, 1936-37.
36. Miscellaneous, 1937-38, 1938-39.
37. Miscellaneous, 1941-42.
38. Gaumont British, 1935-36.

44. Statement of income and expenses for Balaban & Katz Maryland Theatre, prepared by Balaban & Katz.

45. Chart of Balaban & Katz theatres prepared by Mr. Immerman.

46. Franchise between MGM and Balaban & Katz.

47, 48. Statement of Jackson Park Theatre income and earnings.

49. Tabulation from books of Jackson Park Theatre covering calendar years 1936-42, inclusive.

274 53 to 58. Clearance schedules—Balaban & Katz and Twentieth Century-Fox dated:

53. August 12, 1941.
54. September 3, 1936.
55. August 3, 1937.
56. August 12, 1938.
57. July 14, 1939 (57-A substituted).
58. August 2, 1940.

59 to 64. Folders containing Film License Agreements between Balaban & Katz and Twentieth Century-Fox covering:

59. 1938-39 season.
59-A. 1938-39 season.
60. 1939-40—blanket circuit deal K-7.
61. 1940-41 season—K-8.
62. 1936-37 season.
63. 1937-38 season.
64. 1937-38 season.

65 to 67. Folders containing Film License Agreements

between Balaban & Katz and Twentieth Century-Fox covering:

65. 1941-42 season.
65-A 1941-42 season.
66. 1940-41 season.
67. 1939-40 season.

68 and 69. Clearance schedules between Balaban & Katz and Paramount Pictures Inc. covering:

68. 1937-38 season.
69. 1938-39 season.

70 to 76. Folders containing Film License Agreements between Balaban & Katz and Paramount Pictures Inc. covering:

70. 1936-37 season.
71. 1937-38 season.
72. 1937-38 season.
73. 1938-39 season.
74. 1940-41 season.
75. 1941-42 season.
76. 1936-37 season.

77 to 80. Clearance schedules between Balaban & Katz and RKO covering:

77. 1937-38 season.
78. 1938-39 season.
79. 1940-41 season.
80. 1939-40 season.

81 to 102. Film License Agreements between Balaban & Katz and RKO for seasons: 1936-37, 1938-39, 1939-40, 1940-41, 1941-42.

103 to 111. Film License Agreements between Balaban & Katz and MGM for seasons 1936 to 1942, inc.

112. Playing position and clearance schedule between Vitagraph and Balaban & Katz dated October 22, 1941.

113 to 117. Folders containing Film Agreements between Vitagraph and Balaban & Katz for: 1936-37, 1937-38, 1938-39, 1939-40, 1940-41.

118. Clearance schedules between Twentieth Century-Fox Film Corporation and Warner Bros. Circuit Management Corporation for 1936-37, 1937-38, 1938-39, 1939-40, 1940-41, 1941-42.

119. Clearance schedules between Paramount and Warner Bros. Circuit Management Corporation for the years: 1936-37, 1937-38, 1938-39, 1939-40, 1940-41; 1941-42.

276 120. Clearance schedules between Warner Bros. Circuit Management Corporation and Warner Bros. Pictures for seasons: 1936-37, 1937-38, 1938-39, 1939-40, 1940-41.

121. Clearance schedules between Warner Bros. Circuit Management Corporation and RKO Radio Pictures for years: 1936-37, 1938-39, 1939-40, 1940-41, 1941-42.

122. Clearance schedules between Loew's, Inc., and Warner Bros. for seasons: 1936-37, 1937-38, 1940-41.

123 for identification. Tabulation of 14 pages of different theatres in which Paramount Pictures, Inc. admits having an interest by way of some stock ownership in corporations operating such theatres.

124 to 128. Film license Agreements between Fox—Warner Bros. Circuit Management Corporation: 1936-37, 1937-38, 1938-39, 1939-40, 1940-41.

129. Film license agreements between Twentieth-Century Fox and Warner Bros. for 1941-42.

130. Deal sheets between Warner Bros. Pictures and Warner First National, Warner Bros. Circuit Management Corporation—1936 through to 1942.

131 to 154. Various Film License Agreements as follows:

131. Warner Bros. Pictures and RKO, 1941-42.

132. Warner's and Paramount, 1941-42.

133. Paramount and Warner's re pictures for Warner's Avalon Theatre, 1940-41.

277 134. Paramount and Warner's re pictures for Warner's Avalon Theatre, 1941-42.

135. Paramount and Warner's re pictures for Warner's Grove Theatre, 1941-42.

136. Paramount and Warner's re pictures for Warner's Grove Theatre, 1939-1940.

137. Paramount and Warner's re pictures for Warner's Hamilton Theatre, 1940-41.

138. Paramount and Warner's re pictures for Warner's Hamilton Theatre, 1939-40.

139. Paramount and Warner's re pictures for Warner's Jeffery Theatre, 1941-42.

140. Paramount and Warner's re pictures for Warner's Jeffery Theatre, 1939 and 1940.

141. Paramount and Warner's re pictures for Warner's Shore Theatre, 1941 and 1942.

142. Paramount and Warner's re pictures for Warner's Shore Theatre, 1940 and 1941.

143. MGM and Warner's re pictures for various Warner Theatres, 1935-36.

144. MGM and Warner Bros. Pictures re pictures for certain Warner theatres, 1937-38.

145. MGM and Warner's re pictures for Warner's Avalon Theatre, 1940-41.

146. MGM and Warner's re pictures for Warner's Avalon Theatre, 1941-42.

147. MGM and Warner's re pictures for Warner's Grove Theatre, 1940-41.

148. MGM and Warner's re pictures for Warner's Grove Theatre, 1941-42.

149. MGM and Warner's re pictures for Warner's Hamilton Theatre, 1940 and 1941.

150. MGM and Warner's re pictures for Warner's Hamilton Theatre, 1941-42.

151. MGM and Warner's re pictures for Warner's Jeffery Theatre, 1940-41.

152. MGM and Warner's re pictures for Warner's Jeffery Theatre, 1941-42.

153. MGM and Warner's re pictures for Warner's Shore Theatre, 1940-41.

154. MGM and Warner's re pictures for Warner's Shore Theatre, 1941-42.

278 155. Data received from counsel for Balaban & Katz showing pictures played on percentage in loop, etc.

156. Map showing location of theatres on south side of Chicago.

156-A. List of theatres shown on Pl. Ex. 156 with their respective addresses, seating capacities and playing positions.

173. Compilation showing gross receipts of six loop theatres of Balaban & Katz for the years 1937-1942.

Warner Exhibits.

4 to 10. Mr. Roses's Sales Reports for Vitagraph.

11. Book of Photographs of Warner Theatres.

12. List of theatres operated by Warner Brothers since 1930.

13. Schedule showing admission prices charged at Ava-

lon, Grove, Jeffery and Shore Theatres of Warner's 1930-1942.

14. Schedule showing date of installation of refrigeration at Warner houses and major improvements, etc.

15. List of employes at Jeffery.

16, 17. Box office receipts and attendance at Avalon, Jeffery, Hamilton, Shore and Lexington Theatres of Warner's.

18. Memorandum re screeno and bank night at Warner's Jeffery Theatre.

19 to 26. Sales reports.

27 to 31. Sales reports of Mendelson and Goldman.

279 Balaban & Katz and Paramount Exhibits.

1. Letter July 6, 1942—Jackson Park Theatre, by Salkin, to J. J. Donohue of Paramount.

2 for identification. Document bearing signature of Salkin.

3. Book of photographs of various theatres.

4. Map.

4A & B. Cellophane Chart.

5. Department of commerce report re map material.

6. Map.

10. Statement of receipts of Tivoli Theatre of Balaban & Katz—1933-43 (read in evidence).

11. Statement of receipts of Tower Theatre of Balaban & Katz—same period.

12. Graph showing receipts of Tower Theatre of Balaban & Katz—same period.

13. Graph showing receipts of Maryland Theatre of Balaban & Katz—same period.

14. Graph showing receipts of plaintiffs' Jackson Park Theatre for same period.

15. Stipulation re Neil Agnew testimony (read into record).

16. Statement of certain Maryland Theatre figures requested of witness Immerman by plaintiff.

Loew, RKO, Fox Exhibits.

A. Tabulation of newspaper advertisements of exhibitions of motion pictures at various theatres—1916-26.

B to F. Analysis of motion pictures exhibited at Jackson Park Theatre, 1916-26.

280 All original exhibits introduced and received in evidence and Pl. Ex. 123 for identification are, pursuant to order of the District Court of August 21, 1944, to be certified by the clerk of this court to the United States Circuit Court of Appeals for the Seventh Circuit for use and reference on the appeal.

Respectfully submitted,

Miles G. Seeley,
Attorney for Defendants RKO Radio Pictures, Inc., Loew's, Incorporated, Twentieth Century-Fox Film Corporation.

Edmund D. Adcock,
Edward R. Johnston,
Attorneys for Defendants Paramount Pictures, Inc. and Balaban & Katz Corporation.

Vincent O'Brien,
Attorney for Defendants Vitagraph, Inc., Warner Bros. Pictures, Inc., Warner Bros. Circuit Management Corporation and Warner Bros. Theatres, Inc.

281 Northern District of Illinois, }
Eastern Division } ss.

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designation filed in this Court in the cause entitled: Florence B. Bigelow, et al., Plaintiffs *vs.* RKO Radio Pictures, Inc., et al., Defendants, No. 4525, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 9th day of November, A. D. 1944.

Roy H. Johnson,
Clerk.

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume III of the printed record, filed in this Court on the fourteenth day of February, 1945, in:

Cause No. 8716.

Florence Bigelow, *et al.*,
Plaintiffs-Appellees,

vs.

RKO Radio Pictures, Inc., a Corporation, *et al.*,
Defendants-Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 6th day of September, A. D. 1945.

(signed) Kenneth J. Carrick
(seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the third day of October, in the year of our Lord one thousand nine hundred and forty-four, and of our Independence, the one hundred and sixty-ninth.

Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom, *Plaintiffs-Appellees,* 8716 *vs.* RKO Radio Pictures, Inc., a Corporation, Loew's Incorporated, a Corporation, Twentieth Century-Fox Film Corporation, a Corporation, Paramount Pictures, Inc., a Corporation, Balaban & Katz Corporation, a Corporation, Vitagraph, Inc., a Corporation, Warner Bros. Pictures, Inc., a Corporation, Warner Bros. Circuit Management Corporation, a Corporation, and Warner Bros. Theatres, Inc., a Corporation, *Defendants-Appellants.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And, to-wit: On the ninth day of May, 1945, the foll
ing further proceedings were had and entered of rec
to-wit:

Wednesday, May 9, 194

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.

Florence B. Bigelow, *et al.*, *Plaintiffs-Appellees,*	Appeal from the
8716 *vs.*	trict Court of
RKO Radio Pictures, Inc., a Corporation, *et al.*, *Defendants-Appellants.*	United States the Northern trict of Illi Eastern Divisio

Now this day come the parties by their counsel, and cause comes on to be heard on the transcript of the rec and the briefs of counsel, and on oral argument by Miles G. Seeley, Mr. Vincent O'Brien and Mr. Edward Johnston, counsel for appellants and by Mr. Thomas McConnell, counsel for appellees, and the Court takes matter under advisement.

And afterwards, to-wit: On the third day of August, 1945, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit;

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 8716. OCTOBER TERM, 1944, APRIL SESSION, 1945.

FLORENCE B. BIGELOW, MARION B. KOERBER, JOHN E. BLOOM, and WILLIAM C. BLOOM,

Plaintiffs-Appellees,

vs.

RKO RADIO PICTURES, INC., A Corporation, LOEW'S, INCORPORATED, A Corporation, TWENTIETH CENTURY-FOX FILM CORPORATION, A Corporation, PARAMOUNT PICTURES, INC., A Corporation, BALABAN & KATZ CORPORATION, A Corporation, VITAGRAPH, INC., A Corporation, WARNER BROS. PICTURES, INC., A Corporation, WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, A Corporation, and WARNER BROS. THEATRES, INC., A Corporation,

Defendants-Appellants.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

August 3, 1945.

Before SPARKS, MAJOR and MINTON, *Circuit Judges.*

SPARKS, *Circuit Judge.* This action was brought under Sections 1, 2 and 7 of the Sherman Act, 15 U. S. C. A. Sections 1, 2, 7, and Section 4 of the Clayton Act, 15 U. S. C. A. Section 15, to recover threefold the damages allegedly

sustained by plaintiffs by reason of alleged violation by defendants of Sections 1 and 2 of the Sherman Act, during the five years immediately preceding July 28, 1942.

The jury returned a general verdict for the plaintiffs, and judgment was rendered for threefold the amount of the verdict, and for costs, including attorneys' fees. The appeal is from that judgment.

The alleged errors relied on arose out of the trial court's failure to grant defendants' motions for a directed verdict and for judgment *non obstante veredicto*, or in the alternative, for a new trial. A new trial was asked because the jury, during their deliberations, had before them an exhibit, alleged to have been prejudicial to defendants, to which defendants' objections had been sustained when offered in evidence by plaintiffs.

The issues involve certain producers, distributors, and exhibitors of moving picture films. The territory involved is the Loop District in Chicago, and a district approximately eight to ten miles south and a little east of the Loop, in or near the neighborhood of Jackson Park. Plaintiffs are exhibitors. On November 1, 1936, they became the owners and operators of Jackson Park Theater, at Stony Island and 67th Streets, at the southwest corner of Jackson Park, since which time they have there continued to exhibit moving picture films. The theater was part of a large building which also contained 16 stores, 13 apartments, a 40-room hotel, 8 offices and lofts. Plaintiffs' parents had owned the building and operated this movie theater since some time in 1916.

The defendants, RKO Radio Pictures, Inc., Loew's, Inc., both of Delaware, and Twentieth Century-Fox Film Corporation, Paramount Pictures, Inc., and Vitagraph, Inc., of New York, are all distributors of motion picture films. Paramount Pictures, Inc., is also a producer.

Balaban and Katz Corporation, of Delaware, a subsidiary of Paramount, is an exhibitor which operates about fifty theaters in Chicago and its suburbs, including the Tivoli, Tower and Maryland located in or near the Jackson Park District.

Warner Bros. Circuit Management Corporation is an exhibitor which operates about twenty theaters in Chicago, including the Avalon, Jeffrey, Grove, Shore and Hamilton located in or near the Jackson Park District. This corpo-

ration and Vitagraph, Inc., are subsidiaries of Warner Bros. Pictures, Inc., a producer, which in turn is affiliated with Warner Bros. Theaters, Inc., which merely holds title to certain of the Warner Theaters.

Feature films, the distribution and exhibiting of which are here involved, are photoplays recorded on from 4,000 to 12,000 feet of film, and comprise the principal item of entertainment in the usual motion picture program. These films are first photographed on film negatives, from which are made positive prints to be projected onto the screens of the theaters. The cost of producing the negative of such film ranges from about two hundred thousand to several million dollars. The cost of each positive print is from $150 to $900, depending upon its length and whether it is black and white or in technicolor.

There are about 17,000 motion picture theaters in the United States, and the superior feature films may be exhibited in as many as 13,000 theaters. Approximately 75% of the theaters pay a license fee to the distributor which is less than the cost of a single positive print. For this reason it is economically impossible for a picture film to be exhibited simultaneously in all or in any large portion of the theaters desiring to exhibit it. In this case the defendants have submitted uncontroverted evidence that the distributor must limit the number of positive prints of any one picture to not more than 250, and must license the exhibition of each print successively in as many as 50 theaters in order to recover its costs and some profit.

Motion picture films are copyrighted and they are distributed by licensing their exhibition under copyright upon such terms as may be agreed upon between the exhibitor and the distributor and contained in a license agreement or film contract.

For many years the distributors of motion picture films, including those of the defendants, have used a method of releasing films for exhibition, which has come to be known as the "Chicago system of release." Under it films are exhibited in Chicago in a pattern of successive release weeks or "runs," beginning with what is called "Loop first run" which is the period during which any film is first exhibited in the city in one of the large Loop theaters. After such run there is a waiting time of about three weeks during which the film is not exhibited anywhere in the city. Such waiting time is called "clearance."

Beginning with the fourth week after the Loop run it is exhibited in other theaters throughout the city in a continuous succession of release weeks. The fourth, fifth and sixth weeks are known as "A pre-release weeks." The seventh and eighth weeks are known as "B pre-release weeks." The ninth week is known as "C pre-release week." Then follow a succession of "weeks of general release," and the tenth week after the Loop run is known as the "first week of general release."

The license fees paid by exhibitors to distributors are either specified sums or percentages of the exhibitor's box office receipts or sometimes both. In Chicago such percentage applies only to the Loop "first run theaters." The exhibitor agrees that he will not charge less than certain admission prices specified in the license agreement during the exhibition of the licensed films at his theater, under a penalty of a forfeiture of his license. This provision is inserted in the license in order to protect the value of the pictures in both prior and subsequent runs, because a reduction of admission prices in a prior run has the effect of damaging the distributor's copyright in all subsequent runs, and is especially advantageous to the distributor in the Loop run where he receives a percentage of the box office receipts. The minimum admission prices which the licensees agreed to observe were as follows: Loop, 75 cents; A runs, 50 cents; B runs, 40 cents; C runs, 30 cents; and in the first week of general release, 25 cents. In subsequent weeks of general release, the minimum admission prices are lower.

The theory of the complaint is that the defendants had and still maintain a monopoly in the prior Loop run and A pre-release weeks by joining in a price-fixing scheme to stop the competition of the subsequent run theaters. The alleged motive of the defendant exhibitors was to maintain high fixed admission prices in their Loop and pre-release theaters and thereby share in the box office receipts by virtue of their percentage contracts. It is alleged that the entire system of release is part of a price-fixing scheme and therefore illegal under the Sherman Act. The complaint further alleges a subsidiary theory that, apart from the illegality of the system, defendants illegally discriminated against the plaintiffs by refusing to permit them to negotiate and purchase a higher playing position than that which they had under their contract.

The theaters here involved, outside the Loop, with their capacity, the year they began as exhibitors, their ownership and present playing position are as follows:

Theater	Capacity	Year began	Owner	Position
Tivoli	3474	1921	1925 B&K	AP-R*
Tower	2995	1923	1928 B&K	BP-R
Avalon	2385	1927	1930 Warner	AP-R
Jeffrey	1804	1924	1930 Warner	CP-R
Grove	1856	1925	1930 Warner	CP-R
Maryland	1489	1918	1928 B&K	CP-R
Jackson Park..	1420	1916	1936 Piffs.	1st week GR**
Shore	1496	1927	1930 Warner	1st week GR
Hamilton	989	1916	1930 Warner	2nd week GR

* Pre-release. ** General release.

For fifteen years before this suit was brought, the respective playing positions of these theaters were substantially as shown above, and none of them was affiliated with any distributor until many years after it was licensed as an exhibitor. After acquiring these theaters none of the defendant exhibitors changed or attempted to change its playing position, except the Hamilton, whose run was temporarily advanced one week by arrangement with plaintiffs, who were then seeking to advance the playing position of their Jackson Park Theater to C Pre-release week. In this they failed, and Hamilton Theater's position was returned to the second week of general release.

This controversy apparently stems from plaintiffs' failure to be assigned a playing position in C Pre-release week. However, the complaint proceeds on the general theory that plaintiffs have been damaged by defendants' unlawful acts. They first allege that the entire "Chicago system of release" was illegal because it was the result of a conspiracy among defendants to create a monopoly in restraint of trade and interstate commerce. Hence they say that all the film license agreements entered into under that system were unlawful.

They further allege that if that system be held not to be unlawful, the defendants with the use of that system conspired to discriminate against plaintiffs' theater with respect to the run made available to it within the framework of that system.

Nothing is said in the complaint relative to minimum admission prices required under the license agreements. However, at the trial this point was proven and stressed

over defendants' objections, although their exception to that ruling, if any, is not here relied on.

At plaintiffs' request the court instructed the jury "that only in the event that you find that there exists no conspiracy or combination to fix minimum admission prices, or no unreasonable restraint of trade, by the defendants by virtue of the Chicago system of release, will you have occasion to consider whether or not the plaintiffs demanded and sought to obtain a playing position in 'C' week."

The court further instructed the jury that plaintiffs were seeking to recover on either one of two theories, and that the jury, in determining the fact of injury, and in assessing the damages therefor, if any, "must choose one or the other of said two theories." The verdict being a general one, the question arises as to which theory the verdict is based on.

Defendants contend that under the court's instruction, as requested by plaintiffs, the jury was required to choose between two inconsistent theories, and that they could not recover on both. This seems to be what the court said, and it is consonant with the argument of plaintiffs' counsel to the jury when he said (with respect to the second issue) "So I say that that is a subsidiary issue, but it is an issue, it was an issue in the case, and becomes an issue in the event, and only in the event, as I see it, that you should find, and I don't know how in the world you could find it from the evidence in this case, that this system (the Chicago System of Release) was reasonable."

The plaintiffs now argue before us that the jury did not have to choose between two theories of conspiracy because if they found the larger conspiracy to exist, they could still have found that as a part of it, or independent of it, the defendants conspired to prevent plaintiffs from acquiring a C run; that the jury, under other instructions of the court, not specifically referring to them, could find the defendants guilty of either or both conspiracies, and apply either theory of damages. In other words, they say that the greater conspiracy includes the lesser and does not exclude it. No question is here raised by any party as to the correctness of any instruction given or refused, and we find none given which supports plaintiffs' argument referred to in this paragraph of our opinion, or which is inconsistent with the court's instructions, or plaintiffs' argument to the jury, from which we have heretofore

quoted. It seems clear that the present argument is quite inconsistent with plaintiffs' argument to the jury and the quoted instructions. At the moment we are not interested in which is correct. We must presume that the jury followed the court's instructions, and returned their verdict on one of the two theories then presented. We are now merely trying to ascertain on which theory the verdict is based, regardless of whether the instruction was right or wrong. In either event plaintiffs are bound by it in the determination of the theory, for they requested it.

It seems clear to us that the verdict is based upon the first theory, that is to say that the entire Chicago system of release was illegal because it was the result of a conspiracy among defendants to create a monopoly in restraint of trade and interstate commerce. Our conclusion in this respect is based upon the following facts. The verdict was for $120,000. Separate methods were submitted to the jury, for measuring the damages claimed to have resulted on each theory, and different evidence was introduced for that purpose.

One method of attempting to prove damages was by a comparison of the average profits of plaintiffs' theater during a four-year period preceding July 28, 1937, with its lessened profits during the five years immediately following that date. The difference was in excess of $120,000, and such evidence if pertinent would support the verdict under the first theory. The other evidence introduced to prove damage was a comparison between the gross profits of the Maryland theater, playing in C pre-release week during the period from July 28, 1937, to July 28, 1942, and the gross profits of plaintiffs' theater playing the first week of general release, during that time. This difference was $115,982.34, and such evidence, if pertinent, would not support the verdict under the second theory by more than $4000, that is to say the verdict, if under the second theory, would exceed the only proof by that amount.

In view of the court's instruction, requested by plaintiffs, they can not be heard to say now that the jury intended their verdict to be based on both theories. We may concede for the purpose of argument that there was one general conspiracy to decrease plaintiffs' patronage, for that is the sole cause of their alleged damages; that the decrease of their patronage was proximately caused by defendants' conspiracy to cause it; first, by the use of the Chicago

system of release, which was alleged to be illegal because it prescribed minimum admission prices in all license agreements, and second, by the use of that system, regardless of whether it was illegal or not, to discriminate against plaintiffs' theater with respect to the run made available to it within the framework of that system. However, this is not what the court, at plaintiffs' request, told the jury. Hence we feel constrained to hold that the verdict is based on the theory that the Chicago system of release is unlawful.

That there was such a conspiracy by the defendants to accomplish the result charged under the first theory, is supported by substantial evidence. This constitutes a factual finding by the jury which we can not disturb. True, no specific agreement to enter into such conspiracy on the part of the defendants was proven, but that was not necessary. Knowing participation by competitors without previous agreement in a plan, the necessary consequence of which if carried out is unreasonable restraint of interstate commerce, is sufficient to establish an unlawful conspiracy. *Interstate Circuit, Inc.* v. *United States*, 306 U. S. 208. This case also holds that a conspiracy fixing the minimum admission prices for the exhibition of copyrighted motion picture film is illegal. See also *United States* v. *Masonite Corp.*, 316 U. S. 265; *United States* v. *Bausch and Lomb Optical Co.*, 321 U. S. 707.

Defendants cite our decision in *Gary Theater Company* v. *Columbia Pictures Corporation*, 120 F. 2d 891, to the proposition that the fact that several distributors, doing business with the same theaters, license them to exhibit films according to the same pattern of runs and clearance is not a circumstance from which a conspiracy among the distributors can be inferred. However, the opinion does not use this language either precisely or inferentially. We held there that whether a conspiracy exists is a question of ultimate fact, but whether such conspiracy was illegal under the statute was a question of law, and since the trial court had found as an ultimate fact that there was no conspiracy, and concluded as a matter of law that defendants' practice and contracts with plaintiffs were lawful and reasonable, we were not permitted to alter the findings of fact, nor to reverse for error in the legal conclusions because the latter were substantially supported by the findings.

In *Westway Theater* v. *Twentieth Century-Fox F. Corporation*, 30 F. Supp. 830, affirmed on the opinion of the Dis-

trict Court, 113 F. 2d 932, and cited to the same proposition, the District Court likewise found as a fact that there was no conspiracy and dismissed the complaint. In each of the two last-named cases the Circuit Court of Appeals was bound by the findings of facts of the District Court. In neither case, nor in the instant case, did any court attempt to lay down a rule which would establish the fact of conspiracy by inference or otherwise. The facts in each case were different. In the instant case we think the court was warranted in inferring a conspiracy from the fact that the defendant distributers were licensing the same theaters to exhibit films under precisely the same patterns of runs and clearance. We do not say that from that fact alone the court could infer an illegal conspiracy. We think it could not do so. However, when the effects of such licensing were considered, we think the District Court, under the decisions to which we have referred, was warranted in concluding as a matter of law that such conspiracy was an illegal one, and if as a proximate result of it plaintiffs were damaged thereby, they would be entitled to recover for such damage to themselves as they had proved under such theory or theories upon which they relied. In their prayer they also asked for equitable relief by way of injunction. However, they abandoned this request after verdict and relied upon the money judgment.

We think the question whether the evidence supports the damages is of a more serious nature. The amount of this verdict was required by statute to be trebled by the judgment. In this respect neither the jury nor either court had any discretion. The verdict should represent actual damage sustained, and two thirds of the judgment is a penalty which Congress has seen fit to impose in such cases upon a guilty defendant. The penalty should in no manner militate against plaintiffs' right to recover, nor does its infliction furnish any proof whatever of defendants' guilt. The jury must base their verdict upon a preponderance of all the competent evidence. Our duty is to affirm if the verdict was based upon substantial competent evidence.

The burden was upon plaintiffs to prove that they were damaged as a direct result of the illegal conspiracy, and to submit evidence from which the jury could reasonably determine or approximate the amount. This we think they did not do. They sought to recover and did so because of the illegal conspiracy which was based upon the illegal li-

cense. Their object was to rid themselves, as well as the defendants, of the Chicago system. They vigorously contended that if they were permitted to purchase defendants' product by bid on an open market, the net profit of their theater in exhibiting those product would exceed their net profit under the Chicago system. It would seem then that the measure of damages in such case would be the excess, if any, of the former over the latter. The latter they knew and proved; the former they did not know, nor did they attempt to prove or approximate it by competent evidence. On this phase of the case they merely proved the normal earnings of their theater for five years immediately preceding their ownership, when it was owned and operated by their parents under the Chicago system of release.

The undisputed evidence is that plaintiffs neither operated nor assisted in operating any theater prior to their ownership of this one, and these facts would only prove that matters other than the illegal Chicago system had proximately caused the damages assessed by the jury. The only other evidence submitted as to plaintiffs' damage was the difference in amount between the gross profit of the Maryland in the five years ending in July 1942, operating under CP-R week of the Chicago system, and the gross profit of plaintiffs' theater operating under 1st GR week of the same system for the same time. Certainly such evidence would not tend to prove what profits either would have received under any system other than the illegal Chicago system, and it is clear that it was neither offered nor admitted for that purpose.

In suits under our anti-trust laws for claimed loss of profits, speculation is not permitted to take the place of proof of the *fact* of damage, although if the *fact* of damage is proved, the *amount* may be reasonably approximated if based upon competent evidence. *Story Parchment Co.* v. *Paterson Co.*, 282 U. S. 555; *Eastman Co.* v. *Southern Photo Co.*, 273 U. S. 359; *Wm. H. Rankin Co.* v. *Associated Bill Posters*, 42 F. 2d 152; *Baush Machine Tool Co.* v. *Aluminum Co. of America*, 79 F. 2d 217.

Plaintiffs rely on *Eastman Kodak Co.* v. *Southern Photo Materials Co.*, *supra*, as supporting a variant of this elemental rule. There the jury was allowed to use as a base to measure plaintiffs' damages a period when it was dealing with defendant under the latter's monopolistic selling plan. However, it was permitted because there was affirma-

tive, uncontradicted evidence tending to show that under such plan the dealers' profits did not exceed those on the sale of goods of other manufacturers not parties to the monopoly.

On this point plaintiffs also rely on *Story Parchment Company* v. *Paterson Parchment Paper Company, supra.* There a price cutting conspiracy by defendant was involved. The serious question was not the *fact* of damage, but the *amount.* There was evidence of the prices received by petitioner before the cut prices were put into effect, and those received after, showing actual and substantial reductions, and so there was evidence from which the *probable amount* of the loss could be approximated. The court said: "In such case, while the damages (as a fact) may not be determined by mere speculation or guess, it will be enough if the evidence show the *extent of the damages* (our emphasis) as a matter of just and reasonable inference, although the result be only approximate." Hence we think there was no departure from the rule in either case relied upon. Here there was no such evidence submitted upon which either the fact of damage or an approximation of the amount could be made.

It is quite true that the manager of plaintiffs' theater, after he was informed of the profits of the Maryland Theater, in its CP-R position, during the four years immediately preceding July 28, 1942, testified that he cou'd do as much business with plaintiffs' theater, as Maryland had done, had the former had a CP-R playing position, and received the same admission price that it had been receiving, which was the same as that of the Maryland and five cents more than the minimum admission price of his first general release assignment. However, we think such proof, if competent, could only apply to plaintiffs' second theory, which we think can not properly be considered here. Moreover, it does not purport to be based on any knowledge of the witness. It was a mere guess. Furthermore, the same witness, at the pre-examination hearing, testified that he had no opinion as to what business plaintiffs' theater could do in an open market not controlled by the Chicago system.

It is contended that plaintiffs voluntarily participated in and profited by the Chicago system of release, and were thereby *in pari delicto* with the defendants, hence, defendants urge that plaintiffs were estopped to recover their alleged damages. This contention seems to be fully negatived by the *Eastman* case, *supra.*

The defendants contend that they are entitled to a new trial because the jury had before them and saw, during their deliberations, an exhibit which had not been received in evidence. This exhibit was numbered 123 for identification. It consisted of a list of 1559 theaters throughout the United States, in which the defendant Paramount has an interest. When first offered in evidence the court deferred its ruling. Later at the conclusion of plaintiffs' evidence they reoffered all identified exhibits Nos. 1 to 155. The court said, "All right that reoffer will be accepted." There were no exceptions to the ruling. This question was argued before the district court on the motion for a new trial, at which affidavits and counter-affidavits were filed. The court made no change in the record, and overruled the motion. Under these circumstances we hold that exhibit 123 was admitted in evidence, and we have no authority to alter the certified record.

Plaintiffs also allege, as a part of the illegal conspiracy, the use of double features in defendants' theaters, necessitating the adoption of the same double features in their own theater to maintain competition. Appellants contend that there was no evidence which supports the general finding of the jury that double features were introduced by them as a part of their conspiracy, as alleged. What we have heretofore said with respect to proof of conspiracy need not be repeated. It is sufficient to say that neither the sale nor use of double features is illegal *per se*, but if the sale or use is a part of an illegal conspiracy, such as here alleged, every element used for the purpose of accomplishing the intended result of such illegal conspiracy becomes tainted with illegality. It is the intended result of such use which renders it illegal, not the thing *per se*, nor its use without such intended result.

The record discloses that prior to the use of double featuring, plaintiffs' theater was always able to buy some product that had not already been shown by defendants' theaters, and this was available free of the restrictions of the Chicago system of release. That product was taken away by defendants' prior contracts, made pursuant to and as a part of the conspiracy, and placed under the restriction of the illegal system, and thereafter was not obtainable by plaintiffs, except by use of the illegal system. The general verdict of the jury, in effect, finds this evidence to be true, and we can not disturb it.

However, we are again confronted with the absence of proof as to the amount of damage suffered by plaintiffs as a proximate result of defendants' acts in this respect, and there is no evidence from which it can be reasonably approximated. We find no approved variation of the rule for the recovery and measure of damages as laid down in the cases above referred to, and for this reason we feel constrained to reverse the judgment, with instructions to render judgment for defendants *non obstante veredicto.*

Endorsed: Filed August 3, 1945. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the third day of August, 1945, the following further proceedings were had and entered of record, to-wit:

Friday, August 3, 1945.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.

Florence B. Bigelow, *et al.*, *Plaintiffs-Appellees,* vs. RKO Radio Pictures, Inc., a Corporation, *et al.*, *Defendants-Appellants,*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
8716	

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said District Court with instructions to render judgment for the defendants non obstante veredicto.

And afterwards, to-wit: On the tenth day of August, 1945, the following further proceedings were had and entered of record, to-wit:

Friday, August 10, 1945.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Florence B. Bigelow, *et al.*, *Plaintiffs-Appellees,* vs. RKO Radio Pictures, Inc., a Corporation, *et al.*, *Defendants-Appellants.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
8716	

On motion of counsel for appellees, it is ordered that the issuance of the mandate of this Court be stayed for sixty days.

And afterwards, to-wit: On the twenty-fourth day of August, 1945, there was filed in the office of the Clerk of this Court, a Designation of Record, which said designation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Florence B. Bigelow, *et al.*, *Plaintiffs-Appellees*, *vs.* RKO Radio Pictures, Inc., a Corporation, *et al.*, *Defendants-Appellants.*	No. 8716.

DESIGNATION OF CONTENTS OF RECORD ON REVIEW FOR THE SUPREME COURT OF THE UNITED STATES.

To the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

You will please prepare, transmit and deliver to the Clerk of the Supreme Court of the United States copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for writ of certiorari being filed by plaintiffs-appellees:

1. Transcript of record on appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
2. Hearing and submission to this Court.
3. Opinion of this Court.
4. Judgment of this Court.
5. Order staying mandate.

Thomas C. McConnell,
Attorney for Plaintiffs-Appellees.

Endorsed: Filed August 24, 1945. Kenneth J. Carrick, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of proceedings had and papers filed as called for by the designation of record on petition for writ of Certiorari, filed on the twenty-foarth day of August, 1945, in:

Cause No. 8716.

Florence Bigelow, *et al.*,
Plaintiffs-Appellees,

vs.

RKO Radio Pictures, Inc., a Corporation, *et al.*,
Defendants-Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 6th day of September, A. D. 1945.

(signed) Kenneth J. Carrick
(seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

No. 444

ORDER ALLOWING CERTIORARI—Filed November 5, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.